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Reader Aids

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

Electronic Bulletin Board

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 0

RIN 3150–AF67

Conduct of Employees; CFR Part Removal

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to remove the provisions concerning the ''Conduct of Employees'' from the Code of Federal Regulations (CFR). This part of the Commission's regulations is no longer applicable because the Office of Government Ethics (OGE) issued executive branch-wide regulations (on exemptions and waivers for financial interests) that supersede the only remaining substantive provision in the NRC's regulations at 10 CFR part 0.

EFFECTIVE DATE: This final rule is effective on April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Pamela Urban, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1619.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is amending its regulations to remove the provisions in 10 CFR part 0 in their entirety. On December 18, 1996 (61 FR 66830), the Office of Government Ethics (OGE) issued executive branch-wide regulations on exemptions and waivers for financial interests under 18 U.S.C. 208(b) (codified at 5 CFR 2640). The portion of the OGE regulations on exemptions under 18 USC 208(b)(2) supersedes the only remaining substantive provision in part 0 of the NRC's regulations (10 CFR 0.735–2).

Background

On August 7, 1992 (57 FR 35006), the OGE published its final rule establishing government-wide standards of conduct for executive branch employees. The regulations, which are codified at 5 CFR part 2635, took effect on February 3, 1993, and supplanted a major portion of the NRC's standards of conduct regulations. On January 12, 1993 (58 FR 3825), the NRC published a final rule that amended part 0 to remove those provisions of the NRC's standard of conduct regulations which were to be replaced by the government-wide regulations on February 3, 1993. On May 25, 1993 (58 FR 29951), the NRC further amended part 0 (in compliance with the OGE regulations) to remove NRC internal procedures and delegations of authority on standards of conduct and to place them in internal NRC Management Directives.

In accordance with OGE's issuance of the final rule regarding 18 U.S.C. 208(b) exemptions and waivers (5 CFR 2640), the Commission is issuing this final rule removing 10 CFR part 0 in its entirety.

Because the Commission is required to delete the superseded provisions of 10 CFR part 0 relating to 208(b)(2) exemptions, with no discretion in the matter, the NRC finds, pursuant to 5 U.S.C. 553(b)(B), that there is good cause not to seek public comment on this rule, as such comment is unnecessary. Furthermore, for the reasons stated above, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication of this notice.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because the NRC is eliminating regulations that have been superseded by the Office of Government Ethics' issuance of executive branch-wide regulations on exemptions and waivers for financial interests under 18 U.S.C. 208(b). This rule has no impact on health, safety or the environment. There is no cost to licensees, the NRC, or other Federal agencies.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because the deletion of these regulations does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 0

Conflict of interest, Criminal penalties.

PART 0—[REMOVED]

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2201), as amended; the Energy Reorganization Act of 1974 (42 U.S.C. 5841), as amended; 5 U.S.C. 552 and 553; and 5 CFR part 2640, the NRC is removing 10 CFR part 0 from its regulations.

Dated at Rockville, Maryland this 20th day of March 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–8547 Filed 4–3–97; 8:45 am]
BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–0961]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation M, which

implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. Regulation M was revised in September 1996 under the Board's Regulatory Planning and Review program, which calls for the periodic review of Board regulations. The commentary applies and interprets the requirements of Regulation M. The revisions to the commentary provide guidance on the final rule issued in September 1996, as amended in April 1997.

DATES: This rule is effective April 1, 1997. Compliance is optional until October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Obrea Otey Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667. For users of Telecommunications Devices for the Deaf (TDD) *only,* contact Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary (Supplement I–CL–1 to 12 CFR part 213) provides guidance to lessors in applying the regulation to specific transactions. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

In September 1996, the Board approved a final rule revising Regulation M, after a review of the regulation and consumer leasing generally. The review was conducted under the Board's Regulatory Planning and Review Program, which calls for the periodic review of Board regulations with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions.

The September 1996 final rule includes new disclosures to supplement the act's requirements (61 FR 52246, October 7, 1996). The major changes primarily affect motor-vehicle leasing. They include a mathematical progression on how scheduled payments are derived (using figures such as the gross capitalized cost of a lease, the vehicle's residual value, the amount of depreciation, and the rent charge) and a warning statement about charges for terminating a lease early. General changes in the format of the disclosures require that certain lease disclosures be segregated from other information. A lessor is not required to disclose the cost of a lease expressed as a percentage rate; however, if a rate is disclosed or advertised, a special notice must accompany the rate stating that it may not measure the overall cost of financing the lease. Further, a rate in an advertisement cannot be more prominent than any other Regulation M disclosure.

The final rule also revises the advertising rules and implements amendments to the CLA contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160); those amendments allow a toll-free number or a print advertisement to substitute for certain lease disclosures in radio commercials (which was expanded in the final rule to television commercials). The CLA's advertising rules were further amended and streamlined on September 30, 1996, by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009). The Board issued a proposal to implement those changes. (62 FR 62, January 2, 1997). A final rule has been issued with a mandatory compliance date of October 1, 1997.

The Board published an updated proposal to the commentary in February 1997 (62 FR 7361, February 19, 1997). Comment letters were received from representatives of the major lease trade associations, state agencies, consumer representatives, and the Federal Trade Commission, among others. The final revisions to the commentary include guidance on material that was published for comment in September 1995, incorporate guidance on the September 1996 final rule, and address certain questions raised following public review of the final rule, incorporating many suggestions made by the commenters.

II. Discussion of Final Revisions

The following discussion covers the revisions to the Regulation M commentary section-by-section. Comments that have been revised for further clarity, without substantive change, are not discussed. Most of the discussion focuses on new comments and significant revisions to existing comments.

Introduction

Comments I–3 and I–6 are deleted as obsolete or unnecessary. Comments I–1, I–2, I–4, and I–5 are redesignated accordingly.

Section 213.1—Authority, Scope, Purpose, and Enforcement

Former	New
1–1	1–1.
1–2	Deleted as unnecessary (see appendix C).

Comment 1–1 is revised to clarify persons covered by the regulation.

Section 213.2—Definitions

2(a) Definitions

Former	New
2(a)(2)–1	2(b)–1 and –2; including text from former § 213.2(a)(2).
2(a)(2)–2	2(b)–3.
	2(d)–1 new.
2(a)(4)–1	2(h)–1; includes text from former § 213.2(a)(4).
2(a)(4)–2	2(h)–4.
2(a)(4)–3	2(h)–2.
2(a)(6)–1	2(e)–1.
2(a)(6)–2	2(e)–2.
	2(e)–3 new.
2(a)(6)–3	2(e)–6.
2(a)(6)–4	2(e)–4.
	2(e)–5 new; includes text from former § 213.2(a)(3).
2(a)(6)–5	2(e)–8.
2(a)(6)–6	2(e)–7.
2(a)(7)–1	2(g)–1.
2(a)(8)–1	2(h)–3.
2(a)(9)–1	2(j)–1.
2(a)(12)–1	2(l)–1.
2(a)(14)–1	2(m)–1.
2(a)(14)–2	2(m)–2.
2(a)(14)–3 and –4	2(m)–3.
2(a)(14)–5	2(m)–4.
2(a)(14)–6	4(l)–2.
2(a)(15)–1	2(o)–2.
2(a)(15)–2	2(o)–1; includes text from former § 213.2(a)(15).
2(a)(15)–3	2(o)–3.
2(a)(17)–1 through –5	Deleted as unnecessary.
2(a)(18)–1 through –3	Deleted as unnecessary.
2(b)–1	Deleted as unnecessary.
2(b)–2	3(a)(3)–1.

2(b) Advertisement

Comment 2(b)–1, former comment 2(a)(2)–1, is revised to include examples

of advertisements formerly in § 213.2(a)(2) and to indicate that the term ''advertisement'' includes electronic messages.

2(d) Closed-End Lease

Comment 2(d)–1 provides general guidance on the definition of a ''closed-end lease.''

2(e) Consumer Lease

Comment 2(e)–2, former comment 2(a)(6)–2, is revised to clarify that leases with penalties for not continuing beyond an initial four months are covered under the regulation. Comment 2(e)–3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation. Comment 2(e)–5 incorporates former § 213.2(a)(3), the statutory definition of agricultural purpose in section 103(s) of the TILA. Comment 2(e)–7, former comment 2(a)(6)–6, includes an additional example of a lease deemed incidental to a service, and thus not covered by the regulation.

2(f) Gross Capitalized Cost

Proposed comment 2(f)–1 has been deleted as unnecessary.

2(h) Lessor

Comment 2(h)–1, former comment 2(a)(4)–1, is revised to include the definition of the phrase ''arrange for leasing of personal property'' in former § 213.2(a)(4).

2(m) Realized Value

Comment 2(m)–1 has been revised for accuracy to add a reference to the adjusted lease balance.

Based on comment, comment 2(m)–2 has been revised to add fair market value to the second sentence so as not to exclude the use of this method of determining the realized value, if appropriate, where the leased property is sold.

Comment 2(m)–3 provides guidance for determining the realized value, combining former comments 2(a)(14)–3 and –4. Based on comment, to more closely track the language of the former comments, the comment has been revised from the proposal. The second and third sentences of former comment 2(a)(14)–4 are deleted as unnecessary.

2(o) Security Interest and Security

Comment 2(o)–2, former comment 2(a)(15)–2, is revised to include examples of a security interest formerly in § 213.2(a)(15).

Questions have arisen about whether interest that accrues on a security deposit is a security interest for purposes of this regulation and thus required to be disclosed under § 213.4(r). Under Regulation M, whether or not a security deposit is a security interest under state or other applicable law, a deposit disclosed under § 213.4(b) is not disclosed under § 213.4(r). Interest on a security deposit, however, is disclosable under § 213.4(r) if it is considered a security interest under state or other applicable law.

Section 213.3—General Disclosure Requirements

3(a) General Requirements

Former	New
4(a)–1	3(a)–1.
4(a)–2	Moved to § 213.3(f).
4(a)–3	3(a)(1)–1.
4(a)–4	3(a)–4.
4(a)–5	Deleted as unnecessary.
4(a)(1)–1	3(a)–2 and –3.
4(a)(1)–2	Deleted as unnecessary.
4(a)(2)–1	4(b)–1.
4(a)(2)–2	3(a)(1)–2. 3(a)(1)–3 new.
4(a)(2)–3	3(a)(1)–4.
4(a)(2)–4	Deleted as unnecessary.
4(a)(2)–5	3(a)(1)–5. 3(a)(2)–1 through –3 new.
4(a)(4)–1	Deleted as unnecessary, see revised § 213.3(a)(4).
4(a)(4)–2	Deleted as unnecessary, see revised § 213.3(a)(4).
4(b)–1	3(b)–1.
4(c)–1	3(c)–1.
4(d)–1 through –5	3(d)(1)–1 through –5.
4(d)–6	Deleted as unnecessary.
4(e)–1 and –2	3(e)–1 and –2. 3(e)–3 new; text from footnote 1 of former regulation.

3(a) General Requirements

Comment 3(a)–1, former comment 4(a)–1, is revised to clarify that leasing disclosures must reflect the terms of the legal obligation.

Comment 3(a)–4, former comment 4(a)–4, is revised to provide guidance on disclosing a prior lease or credit balance added to a lease transaction. Commenters also asked the Board to clarify that where a prior lease or credit balance is rolled into a lease and the transaction is disclosed as a single lease, Regulation M disclosures (not Regulation Z) are required. Based on comment and further analysis, language has been added to indicate that Regulation M disclosures are required where a lease transaction includes incidental services or when a prior lease or credit balance is part of a single lease transaction. Accordingly, the illustrations have been revised.

3(a)(1) Form of Disclosures

Comment 3(a)(1)–3, which provides guidance on disclosing the lessor's address, is adopted substantially as proposed. Some commenters expressed concern that requiring the disclosure of the lessor's name only would not adequately identify the lessor. A lessor may add an address or other information such as a telephone number to the identification.

Comment 3(a)(1)–5, former comment 4(a)(2)–5, is revised to provide guidance on ways in which lessors may demonstrate compliance with the requirement that lessees receive disclosures prior to becoming obligated on the lease transaction.

3(a)(2) Segregation of Certain Disclosures

Comment 3(a)(2)–1 provides general guidance on the location of the segregated disclosures referenced in § 213.3(a)(2). Comment 3(a)(2)–2 restates the general rule on including additional information among the segregated disclosures referenced in § 213.3(a)(2). Comment 3(a)(2)–3 provides a cross-reference to the commentary to appendix A which provides guidance on designing lease forms that are substantially similar to the regulation's model forms.

3(b) Additional Information; Nonsegregated Disclosures

Comment 3(b)–1, former comment 4(b)–1, on state law disclosures is revised to add clarifying language; the second sentence has been deleted as unnecessary.

3(d) Use of Estimates

Comment 3(d)(1)–4, former comment 4(d)–4, is revised to provide that in disclosing the estimate of the value of leased property at termination of an open-end lease, a lessor must indicate whether the retail or wholesale value is used. This provision was previously contained in Regulation M in the instructions to the model forms. In addition, the reference to ''intention'' has been deleted as not helpful.

3(e) Effect of Subsequent Occurrence

Comment 3(e)–3 incorporates the first sentence of footnote 1 of the former regulation.

Section 213.4—Content of Disclosures

Former	New
	4(a)–1 new.

Former	New
4(g)–1	Deleted as unnecessary.
4(g)–2	3(a)(1)–2 and –3; date requirement moved to § 213.3(a)(1).
4(g)(1)–1	Deleted as unnecessary.
4(g)(2)–1	Deleted as unnecessary.
4(g)(2)–2	4(b)–1 (cross references former comment 2(b)–2).
4(g)(2)–3	Deleted.
	4(b)–2 new (incorporated from the instructions to the model form in former appendix C–2).
	4(b)–3 through –6 new.
4(g)(3)–1	Deleted as unnecessary.
4(g)(3)–2	4(c)–1; reference to open-end lease deleted.
4(g)(4)–1	deleted.
4(g)(5)–1	4(d)–1 and –2.
4(g)(5)–2	Deleted as unnecessary; see § 213.3(a)(2).
	4(d)–3 new.
4(g)(5)–3	4(d)–4.
4(g)(5)–4	4(d)–5.
	4(d)–6 new.
	4(e)–1 new.
	4(f)–1 new.
	4(f)(1)–1 and –2 new.
	4(f)(8)–1 new.
	4(o)–1 new.
4(g)(6)–1	4(o)–2.
4(g)(6)–2	4(o)–3.
4(g)(7)–1 through –3	4(p)–1 through –3.
4(g)(8)–1	4(h)–1.
4(g)(9)–1	4(r)–1.
4(g)(10)–1 through –5	4(q)–1 through –5.
4(g)(11)–1 through –3	4(i)–1 through –3.
	4(i)–4 and –5 new.
4(g)(12)–1	4(g)(1)–4.
4(g)(12)–2	4(g)(1)–5.
4(g)(12)–3	4(g)(1)–1.
	4(g)(1)–2 new.
	4(g)(1)–3 new.
	4(j)–1 new.
4(g)(14)–1 and –2	4(l)–1 and –2.
	4(l)–3 new.
4(g)(14)–3	4(l)–4.
	4(m)–1 and –2 new.
4(g)(15)–1	4(m)(2)–1.
4(g)(15)–2	Deleted.
	4(m)(1)–1 new.
4(g)(15)–3	Deleted.
4(g)(15)–4	4(m)(2)–2.
4(g)(15)–5	Deleted.
4(g)(15)–6	4(m)(2)–3.
	4(n)–1 new.
	4(s)–1 new.

4(a) Description of Property

Comment 4(a)–1 clarifies that the description of leased property cannot be among the segregated disclosures.

4(b) Total Amount Due at Lease Signing or Delivery

A number of commenters, including consumer and leasing representatives, urged the Board to amend the transaction disclosures to require amounts due at delivery, if delivery occurs after consummation, to be included in the amount due at lease signing disclosure. The Economic Growth and Regulatory Paperwork Reduction Act of 1996 revised the advertising disclosure of the total amount due at lease signing to add amounts due at delivery, if delivery occurs after consummation. The regulation has been revised accordingly to parallel the changes that the Congress made to the advertising disclosure. Comment 4(b)–2 incorporates a definition of ''capitalized cost reduction'' from the instructions in former appendix C–1 of the regulation. Comment 4(b)–3 provides guidance on the disclosure of negative net trade-in allowances where the amount owed on a prior credit or lease balance exceeds an agreed-upon trade-in value. Comment 4(b)–4 clarifies that a rebate is included in the itemization under this section only when it is used to reduce an amount due at lease signing or delivery. Comment 4(b)–5 clarifies that where the balance sheet method is required, in motor-vehicle leases, the totals in each column must equal one another.

4(c) Payment Schedule and Total Amount of Periodic Payments

Comment 4(c)–1 provides guidance in disclosing periodic payments. Commenters asked for guidance on whether all periodic payments required to be paid under a lease, for example an annually assessed tax, must be disclosed under § 213.4(c). To facilitate compliance, only payments made at regular intervals and generally derived from capitalized and amortized amounts, rent, and amounts that are collected by the lessor at the same interval(s) must be disclosed under § 213.4(c). Based on comment and further analysis, the comment has been revised to clarify what payments should be included in the payment schedule and total amount of periodic payments.

4(d) Other Charges

Comment 4(d)–1, former comment 4(g)(5)–1, is revised to provide flexibility in making the ''other charges'' disclosure. Comment 4(d)–3 clarifies that third-party charges are not disclosed under § 213.4(d). Comment 4(d)–6 provides guidance on the disclosure of optional ''disposition'' fees.

4(e) Total of Payments

Comment 4(e)–1 explains the additional statement in the total of payments disclosure for open-end leases.

4(f) Payment Calculation

Comment 4(f)–1 clarifies that lessors should look to state or other applicable law in determining whether the leased property is a motor vehicle.

4(f)(1) Gross Capitalized Cost

Comment 4(f)(1)–1 provides guidance on disclosing the agreed-upon value of a leased motor vehicle.

Comment 4(f)(1)–2 addresses the itemization of the gross capitalized cost. A few commenters suggested that lessors that provide an itemization as a matter of course be allowed to include the itemization among the segregated disclosures. Given that some itemizations may be lengthy, an itemization may not be included in the segregated disclosures so as not to distract from other information.

4(f)(2) Capitalized Cost Reduction

Comment 4(f)(2)–1 provides guidance on the amounts not included in the capitalized cost reduction disclosure.

4(f)(8) Lease Term

Comment 4(f)(8)–1 clarifies the meaning of the phrase ''lease term'' referenced under § 213.4(f)(8).

4(g) Early Termination

Comment 4(g)(1)–2 provides guidance on disclosing the method used to determine the amount of an early termination charge. Comment 4(g)(1)–3 provides guidance on the timing for disclosing a written explanation of the method used to calculate the adjusted lease balance.

4(h) Maintenance Responsibilities

Comment 4(h)–1 has been revised for clarity, based on comment. Proposed comment 4(h)–2, regarding the disclosure of excess mileage charges, is deleted as unnecessary.

4(i) Purchase Option

Several commenters on the September 1995 proposal requested clarification on whether lessors are allowed to disclose a purchase-option fee (and other fees and taxes applicable to the purchase option) separately from the purchase-option price. Comments 4(i)–3 and –4, former comment 4(g)(11)–3, are revised to allow lessors flexibility in disclosing fees associated with a purchase-option

price. Further, with the September 1996 final rule regarding the disclosure format, and since a lessee is not obligated to purchase the leased property, the purchase-option fee and any other fee associated with exercising the purchase option must be disclosed under § 213.4(i) and not § 213.4(d).

Comment 4(i)–5 provides guidance on disclosing the price of a purchase option in a ''fair market value'' lease. Based on comment, the comment has been revised to indicate that the independent source must be readily available.

4(j) Statement Referencing Nonsegregated Disclosures

Comment 4(j)–1 clarifies that inapplicable information may be deleted from the § 213.4(j) disclosure, which references and alerts consumers to read CLA required disclosures not included among the segregated disclosures.

4(l) Right of Appraisal

Comment 4(l)–2, former comment 4(g)(14)–2, is revised to provide that a lessor must indicate whether an appraisal will be based on the wholesale or retail value. This provision was contained in the former regulation in the instructions to the model forms.

4(m) Liability at End of Lease Term Based on Estimated Value

The regulation reformats § 213.4(m), former § 213.4(g)(15), for clarity. The commentary has been similarly reformatted.

Comment 4(m)–2 clarifies that under section 183(a) of the CLA lessors must pay the lessees' attorney's fees.

4(n) Fees and Taxes

Comment 4(n)–1 provides guidance on the treatment of certain taxes, including taxes disclosed under § 213.4(n) and elsewhere.

4(o) Insurance

Comment 4(o)–1 clarifies that § 213.4(o) applies to voluntary and required insurance provided in connection with a lease transaction. Comment 4(o)–3, former comment 4(g)(6)–2, is revised to provide additional guidance on the disclosure of mechanical breakdown protection and, based on comments, other products, (such as guaranteed automobile protection) as insurance under § 213.4(o).

4(p) Warranties or Guarantees

Comment 4(p)–1, former comment 4(g)(7)–1, is revised to provide further guidance on identifying warranties under § 213.4(p) when a lessor provides a list that includes warranties not available to the lessee.

4(s) Limitation on Rate Information

Comment 4(s)–1 clarifies that a lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

Section 213.5—Renegotiations, Extensions, and Assumptions

Section 213.5, formerly § 213.4(h), contains the disclosure rules governing leases that are renegotiated, extended, or assumed. Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension have been included in the regulation.

Former	New
4(h)–1	5–1.
4(h)–2	First sentence moved to § 213.5(a); second sentence deleted; third sentence moved to 5–1.
4(h)–3	Moved to § 213.5(d).
4(h)–4	Moved to § 213.5(b).
4(h)–5	5(b)–1. 5(b)–2 new.
4(h)–6	Deleted as unnecessary.
4(h)–7	Moved to § 213.5(d)(6).
4(h)–8	Moved to § 213.5(d)(2).
4(h)–9	Moved to § 213.5(c).

5(b) Extension

Comment 5(b)–1, former comment 4(h)–5, is revised to clarify the circumstances in which disclosures are required when a consumer lease is extended on a month-to-month basis for more than six months. This comment and comment 5(b)–2 incorporate into the commentary longstanding Board interpretations that were originally issued when leasing provisions were contained in Regulation Z (Truth in Lending) prior to 1982.

Section 213.7—Advertising

Former	New
5(a)–1	7(a)–1.
5(a)–2	7(a)–2.
5(b)–1 and 2	7(c)–1 and 2.
5(c)–1	7(b)–1. 7(b)(1)–1 and –2 new. 7(b)(2)–1 new.
5(c)–2	7(d)(1)–1. 7(d)(2)–1 new.
5(d)–1	7(e)–1 new. 7(f)(1)–1 through –4 new.

The CLA advertising provisions were amended on September 30, 1996 by the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

7(b) Clear and Conspicuous Standard

Comment 7(b)–1 provides guidance on the clear and conspicuous standard. A comment in the September 1995 proposal provided that lease disclosures must appear on a television screen for at least five seconds. The comment was not meant to provide a safe harbor, as five seconds is inadequate as a test for determining full compliance with the clear and conspicuous standard. The comment has been deleted.

7(b)(1) Amount Due at Lease Signing or Delivery

Comment 7(b)(1)–1 clarifies that an itemization of the amount due at lease signing or delivery is not required under § 213.7(d)(2). Comment 7(b)(1)–2 provides general guidance on the prominence rule in § 213.7(b)(1).

7(b)(2) Advertisement of a Lease Rate

Comment 7(b)(2)–1 provides guidance on the location of the statement that must accompany any percentage rate stated in an advertisement.

7(d) Advertisement of Terms that Require Additional Disclosure

7(d)(1) Triggering Terms

Comment 7(d)(1)–1, former comment 5(c)–2, is revised to provide guidance for disclosing examples of a typical lease. The last sentence of the proposed comment has been deleted as unnecessary.

7(d)(2) Additional Terms

Commenters requested clarification on how third-party fees that vary by jurisdiction such as taxes, licenses, and registration fees should be reflected in the disclosure of the total amount due at lease signing or delivery under § 213.7(d)(2)(ii). Comment 7(d)(2)–1 clarifies that lessors have flexibility in disclosing such fees.

7(e) Alternative Disclosures—Merchandise Tags

Comment 7(e)–1 provides general guidance on disclosing multiple-item leases with merchandise tags.

7(f) Alternative Disclosures—Television or Radio Advertisements

7(f)(1) Toll-free Number or Print Advertisement

Comment 7(f)(1)–1 clarifies that a newspaper circulated nationally may qualify as a publication in general circulation in the community served by the media station. Comment 7(f)(1)–2 provides guidance on establishing a number for consumers to call for

disclosure information. Comment 7(f)(1)–3 provides guidance on the use of a multi-function toll-free number to provide disclosures. Comment 7(f)(1)–4 provides general guidance on the statement that must accompany a toll-free number instructing consumers to call the number for details about costs and terms.

Section 213.8—Record Retention

Former	New
6–1	8–1.

Section 213.8 of the regulation was formerly § 213.6.

Section 213.9—Relations to State Laws.

Section 213.9 of the regulation combines and simplifies former §§ 213.7 and 213.8. The comments to these sections, as well as references in former appendices A and B, have been deleted as unnecessary.

Comment 9–1 has been added to include the states that are exempt from Regulation M—Maine and Oklahoma.

Appendix A Model Forms

Former	New
C–1	A–1, A–2.
C–2	Deleted.
C–3	A–3; closed-end definition moved to § 213.2(d)
C–4	A–4.

Under the final rule, the model forms are moved from appendix C to appendix A. Former comment app. C–2 is deleted as unnecessary. Minor revisions are made to other comments in this appendix. For example, comment app. A–1, former comment C–1, is revised to indicate that changes to the headings, format, and the content of the segregated disclosures should be minimal. Also the definition of a closed-end lease in comment app. C–3 is deleted because a definition has been added in the regulation.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

For the reasons set forth in the preamble, 12 CFR part 213 is amended as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. Supplement I to Part 213—Official Staff Commentary to Regulation M is revised to read as follows:

SUPPLEMENT I TO PART 213—OFFICIAL STAFF COMMENTARY TO REGULATION M

Introduction

1. *Official status.* The commentary in Supplement I is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640(f)). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the **Federal Register**. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(f) are further divided by subparagraph, such as comment 4(f)(1)–1 and comment 4(f)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I–1 through I–4. An appendix may be cited as comment app. A–1.

4. *Illustrations.* Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. Illustrative lists are introduced by phrases such as ''including,'' ''such as,'' ''to illustrate,'' and ''for example.''

Section 213.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of foreign banks or leasing companies located in the United States) that offer consumer leases to residents of any state (including foreign nationals) as defined in § 213.2(p). The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 213.2—Definitions

2(b) Advertisement

1. *Coverage.* The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.

ii. Messages on radio, television, and public address systems.

iii. Direct mail literature.

iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever.

v. Telephone solicitations.

vi. On-line messages, such as those on the Internet.

2. *Exclusions.* The term does not apply to the following:

i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.

ii. Informational material distributed only to businesses.

iii. Notices required by federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.

iv. News articles controlled by the news medium.

v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.7(a).

2(d) Closed-End Lease

1. *General.* In closed-end leases, sometimes referred to as ''walk-away'' leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

2(e) Consumer lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

2(g) Lessee

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(h) Lessor

1. *Arranger of a lease.* To ''arrange'' for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it for execution to the leasing company (to whom the obligation is payable on its face) is ''arranging'' for the lease.

ii. An automobile dealer who, without receiving a fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not ''arranging'' for the lease.

2. *Consideration.* The term ''other consideration'' as used in comment 2(h)–1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances where the assignee has substantial involvement in the lease transaction. See cf. *Ford Motor Credit Co.* v. *Cenance,* 452 U.S. 155 (1981) (held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction).

4. *Multiple lessors.* See the commentary to § 213.3(c).

2(j) Organization

1. *Coverage.* The term ''organization'' includes joint ventures and persons operating under a business name.

2(l) Personal Property

1. *Coverage.* Whether property is personal property depends on state or other applicable law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

2(m) Realized Value

1. *General.* Realized value refers to either the retail or wholesale value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term typically is based on the difference between the residual value (or the adjusted lease balance) of the leased property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in § 213.2(m). If the lessor sells the property prior to making the determination about liability, the price received for the property (or the fair market value) is the realized value. If the lessor does not sell the property prior to making that determination, the highest offer or the fair market value is the realized value.

3. *Determination of realized value.* Disposition charges are not subtracted in determining the realized value but amounts attributable to taxes may be subtracted.

4. *Offers.* In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. *Lessor's appraisal.* See commentary to § 213.4(l).

2(o) Security Interest and Security

1. *Disclosable interests.* For purposes of disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

2. *General coverage.* An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded; mechanic's, materialman's, artisan's, and other similar liens; vendor's liens in both real and personal property; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation.

3. *Insurance exception.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

Section 213.3—General Disclosure Requirements

3(a) General Requirements

1. *Basis of disclosures.* Disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with no penalty for termination after a one-year minimum term, disclosures are based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 213.4 (g)(1), (k) and (l).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other; appendix A of this part contains model forms that meet this standard. In addition, although no minimum typesize is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* A lessor may use a multipurpose disclosure form provided the lessor is able to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.

ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: as a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

iii. When a lessor includes an outstanding lease or credit balance in a lease transaction, the lessor may disclose the outstanding balance as part of a single lease transaction (in which case Regulation M, not Regulation Z, disclosures are required) or as a lease transaction and a credit transaction.

3(a)(1) Form of Disclosures

1. *Cross-references.* Lessors may include in the nonsegregated disclosures a cross-reference to items in the segregated disclosures rather than repeat those items. A lessor may include in the segregated disclosures numeric or alphabetic designations as cross-references to related information so long as such references do not obscure or detract from the segregated disclosures.

2. *Identification of parties.* While disclosures must be made clearly and conspicuously, lessors are not required to use the word ''lessor'' and ''lessee'' to identify the parties to the lease transaction.

3. *Lessor's address.* The lessor must be identified by name; an address (and telephone number) may be provided.

4. *Multiple lessors and lessees.* In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.

5. *Lessee's signature.* The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to provide evidence that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may, for example, ask the lessee to sign the disclosure statement or an acknowledgement of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or include instructions alerting a lessee to read the disclosures prior to signing the lease.

3(a)(2) Segregation of Certain Disclosures

1. *Location.* The segregated disclosures referred to in § 213.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time. Alternatively, all disclosures may be provided in a separate document or in the lease contract.

2. *Additional information among segregated disclosures.* The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures.

3. *Substantially similar.* See commentary to appendix A of this part.

3(a)(3) Timing of Disclosures

1. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law.

3(b) Additional Information; Nonsegregated Disclosures

1. *State law disclosures.* A lessor may include in the nonsegregated disclosures any state law disclosures that are not inconsistent with the act and regulation under § 213.9 as long as, in accordance with the standard set forth in § 213.3(b) for additional information, the state law disclosures are not used or placed to mislead or confuse or detract from any disclosure required by the regulation.

3(c) Multiple Lessors or Lessees

1. *Multiple lessors.* If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

3(d) Use of Estimates

3(d)(1) Standard

1. *Time of estimated disclosure.* The lessor may, after making a reasonable effort to obtain information, use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

i. Section 213.4(n) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, or taxes. If these amounts are subject to increases or decreases over the course of the lease, the lessor may estimate the disclosures based on the rates or charges in effect at the time of the disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The ''reasonably available'' standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Residual value of leased property at termination.* In an open-end lease where the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see § 213.4(m)). A lessor should generally use an accepted trade publication listing estimated current or future market prices for the leased property unless other information or a reasonable belief based on its experience provides the better information. For example:

i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications if the lessor reasonably believes based on its experience that the values are understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination of an open-end lease provided the choice is consistent with the lessor's general practice when determining the value of the property at the end of the lease term. The lessor should indicate whether the value disclosed is a retail or wholesale value.

5. *Labelling estimates.* Generally, only the disclosure for which the exact information is unknown is labelled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate every affected disclosure or only the disclosure primarily affected.

3(e) Effect of Subsequent Occurrence

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.

ii. An increase in official fees or taxes.

iii. An increase in insurance premiums or coverage caused by a change in the law.

iv. Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.5.

3. *Lessee's failure to perform.* The lessor does not violate the regulation if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

Section 213.4—Content of Disclosures

4(a) Description of Property

1. *Placement of description.* Although the description of leased property may not be

included among the segregated disclosures, a lessor may choose to place the description directly above the segregated disclosures.

4(b) Amount Due at Lease Signing or Delivery

1. *Consummation.* See commentary to § 213.3(a)(3).

2. *Capitalized cost reduction.* A capitalized cost reduction is a payment in the nature of a downpayment on the leased property that reduces the amount to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing or delivery.

3. *''Negative'' equity trade-in allowance.* If an amount owed on a prior lease or credit balance exceeds the agreed upon value of a trade-in, the difference is not reflected as a negative trade-in allowance under § 213.4(b). The lessor may disclose the trade-in allowance as zero or not applicable, or may leave a blank line.

4. *Rebates.* Only rebates applied toward an amount due at lease signing or delivery are required to be disclosed under § 213.4(b).

5. *Balance sheet approach.* In motor-vehicle leases, the total for the column labeled ''total amount due at lease signing or delivery'' must equal the total for the column labeled ''how the amount due at lease signing or delivery will be paid.''

6. *Amounts to be paid in cash.* The term cash is intended to include payments by check or other payment methods in addition to currency; however, a lessor may add a line item under the column ''how the amount due at lease signing or delivery will be paid'' for non-currency payments such as credit cards.

4(c) Payment Schedule and Total Amount of Periodic Payments

1. *Periodic payments.* The phrase ''number, amount, and due dates or periods of payments'' requires the disclosure of all payments that are made at regular intervals and generally derived from rent, capitalized or amortized amounts such as depreciation, and other amounts that are collected by the lessor at the same interval(s), including for example taxes, maintenance, and insurance charges. Other periodic payments may, but need not, be disclosed under § 213.4(c).

4(d) Other charges

1. *Coverage.* Section 213.4(d) requires the disclosure of charges that are anticipated by the parties incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an ''other charge,'' the lessor may disclose the fee as such without violating § 213.4(d) or the segregation rule under § 213.3(a)(2).

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:

i. Late payment.

ii. Default.

iii. Early termination.

iv. Deferral of payments.

v. Extension of the lease.

3. *Third-party fees and charges.* Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under § 213.4(d).

4. *Relationship to other provisions.* The other charges mentioned in this paragraph are charges that are not required to be disclosed under some other provision of § 213.4. To illustrate:

i. The price of a mechanical breakdown protection (MBP) contract is sometimes disclosed as an ''other charge.'' Nevertheless, the price of MBP is sometimes reflected in the periodic payment disclosure under § 213.4(c) or in states where MBP is regarded as insurance, the cost is be disclosed in accordance with § 213.4(o).

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lessor imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under § 213.4(d) include disposition and ''pick-up'' charges.

6. *Optional ''disposition'' charges.* Disposition and similar charges that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under § 213.4(d). If, under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under § 213.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the return of the leased property to a location outside the lessor's service area as a default, the fee imposed is not disclosed as an ''other charge,'' although it may be required to be disclosed under § 213.4(q).

4(e) Total of payments

1. *Open-end lease.* The additional statement is required under § 213.4(e) for open-end leases because, with some limitations, a lessee is liable at the end of the lease term for the difference between the residual and realized values of the leased property.

4(f) Payment Calculation

1. *Motor-vehicle lease.* Whether leased property is a motor vehicle is determined by state or other applicable law.

4(f)(1) Gross Capitalized Cost

1. *Agreed upon value of the vehicle.* The agreed upon value of a motor vehicle includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, licenses, and registration that are capitalized. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or credit transaction are not included in the agreed upon value.

2. *Itemization of the gross capitalized cost.* The lessor may choose to provide the itemization of the gross capitalized cost only on request or may provide the itemization as a matter of course. In the latter case, the lessor need not provide a statement of the lessee's option to receive an itemization. The gross capitalized cost must be itemized by type and amount. The lessor may include in the itemization an identification of the items and amounts of some or all of the items contained in the agreed upon value of the vehicle. The itemization must be provided at the same time as the other disclosures required by § 213.4, but it may not be included among the segregated disclosures.

4(f)(8) Lease Term

1. *Definition.* Under § 213.4(f)(8) the ''lease term'' refers to the number of periodic payments.

4(g) Early Termination

4(g)(1) Conditions and Disclosure of Charges

1. *Reasonableness of charges.* See the commentary to § 213.4(q).

2. *Description of the method.* Section 213.4(g)(1) requires a full description of the method of determining an early termination charge. The lessor should attempt to provide consumers with clear and understandable descriptions of its early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with § 213.4(g)(1), even if the descriptions are complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the ''adjusted lease balance'') of its early termination charges. For example, a lessor may state that the ''constant yield'' method will be utilized in obtaining the adjusted lease balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.

3. *Timing of written explanation of a named method.* While a lessor may provide an address or telephone number for the consumer to request a written explanation of the named method used to calculate the adjusted leased balance, if at consummation a consumer requests such an explanation, the lessor must provide a written explanation at that time. If a consumer requests an explanation after consummation, the lessor must provide a written explanation within a reasonable time after the request is made.

4. *Default.* When default is a condition for early termination of a lease, default charges must be disclosed under § 213.4(g)(1). See the commentary to § 213.4(q).

5. *Lessee's liability at early termination.* When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the method of determining the amount of the difference must be disclosed under § 213.4(g)(1).

4(h) Maintenance Responsibilities

1. *Standards for wear and use.* No disclosure is required if a lessor does not set

standards or impose charges for wear and use (such as excess mileage).

4(i) Purchase Option

1. *Mandatory disclosure of no purchase option.* Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of a purchase option disclosure, however, a lessor must disclose affirmatively that the lessee has no option to purchase the leased property if the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists under the lease is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase-option fee.* A purchase-option fee is disclosed under § 213.4(i), not § 213.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.

4. *Official fees and taxes.* Official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under § 213.4(i) as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement indicating that the purchase-option price does not include fees for tags, taxes, and registration.

5. *Purchase-option price.* Lessors must disclose the purchase-option price as a sum certain or as a sum certain to be determined at a future date by reference to a readily available independent source. The reference should provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available. Statements of a purchase price as the ''negotiated price'' or the ''fair market value'' do not comply with the requirements of § 213.4(i).

4(j) Statement referencing nonsegregated disclosures

1. *Content.* A lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, the reference to a security interest may be omitted.

4(l) Right of appraisal

1. *Disclosure inapplicable.* The lessee does not have the right to an independent appraisal merely because the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use. Thus, the disclosure under § 213.4(l) does not apply. For example:

i. The automobile lessor might expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it may hold the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the disclosure under § 213.4(l) is not required.

2. *Lessor's appraisal.* If the lessor obtains an appraisal of the leased property to determine its realized value, that appraisal does not suffice for purposes of section 183(c) of the act; the lessor must disclose the lessee's right to an independent appraisal under § 213.4(l).

3. *Retail or wholesale.* In providing the disclosures in § 213.4(l), a lessor must indicate whether the wholesale or retail appraisal value will be used.

4. *Time restriction on appraisal.* The regulation does not specify a time period in which the lessee must exercise the appraisal right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

4(m) Liability at end of Lease Term Based on Residual Value

1. *Open-end leases.* Section 213.4(m) applies only to open-end leases.

2. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions under § 213.4(m), whether successful or not.

4(m)(1) Rent and other charges

1. *General.* This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor (such as official fees and voluntary insurance) are not included in the § 213.4(m)(1) disclosure.

4(m)(2) Excess liability

1. *Coverage.* The disclosure limiting the lessee's liability for the value of the leased property does not apply in the case of early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term.

3. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability at the end of the lease term that is based on the difference between the residual value of the leased property and its realized value. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:

i. Disposition charges.

ii. Excess mileage charges.

iii. Late payment and default charges.

iv. In simple-interest accounting leases, amount by which the unamortized cost exceeds the residual value because the lessee has not made timely payments.

4(n) Fees and taxes

1. *Treatment of certain taxes.* Taxes paid in connection with the lease are generally disclosed under § 213.4(n), but there are exceptions. To illustrate:

i. Taxes paid by lease signing or delivery are disclosed under § 213.4(b) and § 213.4(n).

ii. Taxes that are part of a regularly scheduled payments are reflected in the disclosure under § 213.4(c) and itemized under § 213.4(f)(10).

iii. A tax payable by the lessor that is passed on to the consumer and is reflected in the lease documentation must be disclosed under § 213.4(n). A tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

iv. Taxes charged in connection with the exercise of a purchase option are disclosed under § 213.4(i), not § 213.4(n).

4(o) Insurance

1. *Coverage.* If insurance is obtained through the lessor, information on the type and amount of insurance coverage (whether voluntary or required) as well as the cost, must be disclosed.

2. *Lessor's insurance.* Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(o) even if it provides an incidental benefit to the lessee.

3. *Mechanical breakdown protection and other products.* Whether products purchased in conjunction with a lease, such as mechanical breakdown protection (MBP) or guaranteed automobile protection (GAP), should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP or GAP as insurance, § 213.4(o) disclosures are not required. In such cases the lessor may, however, disclose this information in accordance with the additional information provision in § 213.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, by indicating that the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

4(p) Warranties or Guarantees

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty. If a lessor provides a comprehensive list of warranties that may not all apply, to comply with § 213.4(p) the lessor must indicate which warranties apply or, alternatively, which warranties do not apply.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.3(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

4(q) Penalties and Other Charges for Delinquency

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the

employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(1). The § 213.4(q) and (g)(1) disclosures may, but need not, be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. But in either case, if the additional charge accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(q).

4. *Extension charges.* Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(q).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4(r) Security Interest

1. *Disclosable security interests.* See § 213.2(o) and accompanying commentary to determine what security interests must be disclosed.

4(s) Limitations on Rate Information

1. *Segregated disclosures.* A lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

Section 213.5—Renegotiations, Extensions and Assumptions

1. *Coverage.* Section 213.5 applies only to existing leases that are covered by the regulation. It does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in.

§ 213.2(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

5(b) Extensions

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-month basis and the cumulative extensions exceed six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter for as long as the extensions continue. If a consumer lease is extended for terms of varying durations, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

Section 213.7—Advertising

7(a) General Rule

1. *Persons covered.* All ''persons'' must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in § 213.2(h). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the act.

2. *''Usually and customarily.''* Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

7(b) Clear and Conspicuous Standard

1. *Standard.* The disclosures in an advertisement in any media must be reasonably understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or hear, and cannot comprehend, the information required to be disclosed.

7(b)(1) Amount due at Lease Signing or Delivery

1. *Itemization not required.* Only a total of amounts due at lease signing or delivery is required to be disclosed, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under § 213.4.

2. *Prominence rule.* Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

7(b)(2) Advertisement of a Lease Rate

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any § 213.4 disclosure stated in the advertisement.

7(c) Catalogs and Multi-Page Advertisements

1. *General rule.* The multiple-page advertisements referred to in § 213.7(c) are advertisements consisting of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

12. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2) (i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog or other multiple-page advertisement, the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.

7(d)(1) Triggering Terms

1. *Typical example.* When any triggering term appears in a lease advertisement, the additional terms enumerated in § 213.7(d)(2) (i) through (v) must also appear. In a multi-lease advertisement, an example of one or more typical leases with a statement of all the terms applicable to each may be used. The examples must be labeled as such and must reflect representative lease terms that are made available by the lessor to consumers.

7(d)(2) Additional Terms

1. *Third-party fees that vary by state or locality.* The disclosure of the total amount due at lease signing or delivery may:

i. Exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact; or

ii. Provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that fees may vary by state or locality are disclosed.

7(e) Alternative Disclosures—Merchandise Tags

1. *Multiple-item leases.* Multiple-item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

7(f) Alternative Disclosures—Television or Radio Advertisements

7(f)(1) Toll-Free Number or Print Advertisement

1. *Publication in general circulation.* A reference to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in § 213.7(f)(1)(ii).

2. *Toll-free number, local or collect calls.* In complying with the disclosure requirements of § 213.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any

telephone number that allows a consumer to reverse the phone charges when calling for information.

3. *Multi-purpose number.* When an advertised toll-free number responds with a recording, lease disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several dialing options—such as providing directions to the lessor's place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. *Statement accompanying toll free number.* Language must accompany a telephone and television number indicating that disclosures are available by calling the toll-free number, such as ''call 1–800–000–0000 for details about costs and terms.''

Section 213.8—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained in paper form, on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Section 213.9—Relation to State Laws

1. *Exemptions granted.* Effective October 1, 1982, the Board granted the following exemptions from portions of the Consumer Leasing Act:

i. *Maine.* Lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4, and 5 of the federal act. (The exemption does not apply to transactions in which a federally chartered institution is a lessor.)

ii. *Oklahoma.* Lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the federal act. (The exemption does not apply to sections 132 through 135 of the federal act, nor does it apply to transactions in which a federally chartered institution is a lessor.)

Appendix A—Model Forms

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-payment lease transactions or for quarterly or other periodic payments. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. *Examples of acceptable changes.*

i. Using the first person, instead of the second person, in referring to the lessee.

ii. Using ''lessee,'' ''lessor,'' or names instead of pronouns.

iii. Rearranging the sequence of the nonsegregated disclosures.

iv. Incorporating certain state ''plain English'' requirements.

v. Deleting inapplicable disclosures by blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should facilitate use of multi-purpose standard forms.)

vi. Adding language or symbols to indicate estimates.

vii. Adding numeric or alphabetic designations.

viii. Rearranging the disclosures into vertical columns, except for § 213.4 (b) through (e) disclosures.

ix. Using icons and other graphics.

3. *Model closed-end or net vehicle lease disclosure.* Model A–2 is designed for a closed-end or net vehicle lease. Under the ''Early Termination and Default'' provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's realized value.

4. *Model furniture lease disclosures.* Model A–3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under § 213.4(l) because few closed-end furniture leases base the lessee's liability at early termination on the realized value of the leased property. The disclosure should be added if it is applicable.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 31, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–8574 Filed 4–3–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–06; Amendment 39–9973, AD 97–06–16]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems 1A103/TCM Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McCauley Propeller Systems 1A103/TCM series propellers. This action supersedes priority letter AD 95–21–01 that currently requires visual inspections for cracks in the propeller hub of certain propellers using a 10X power magnifying-glass. This action requires an initial inspection for cracks in the propeller hub in accordance with a dye penetrant inspection procedure, replacement of propellers with cracks that do not meet acceptable limits, rework of propellers with cracks that meet acceptable limits, and repetitive inspections of all affected propellers. This amendment is prompted by development of a dye penetrant inspection and rework procedures. The actions specified by this AD are intended to prevent propeller separation due to hub fatigue cracking, which can result in loss of control of the aircraft.

DATES: Effective April 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 1997.

Comments for inclusion in the Rules Docket must be received on or before June 3, 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. 97–ANE–06, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from McCauley Propeller Systems 3535 McCauley Drive, P.O. Drawer 5053, Vandalia, OH 45377–5053; telephone (937) 890–5246, fax (937) 890–6001. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Room 323, Des Plaines, IL 60018; telephone (847) 294–7132, fax (847) 294-7834.

SUPPLEMENTARY INFORMATION: On September 29, 1995, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive

(AD) 95–21–01, applicable to McCauley Propeller Systems 1A103/TCM series propellers, which requires visual inspections for cracks in the propeller hub of certain propellers using a 10X power magnifying-glass. That action was prompted by reports of hub cracking on the front hub face near the attachment bolt holes on certain propellers. That condition, if not corrected, could result in propeller separation due to hub fatigue cracking, which can result in loss of control of the aircraft.

Since the issuance of that priority letter AD, the manufacturer has developed a improved dye penetrant inspection procedure that will more accurately discover cracking. In addition, the manufacturer has developed rework procedures for propellers that do not exhibit severe cracking.

The FAA has reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) No. 221B, dated December 16, 1996, that describes procedures for dye penetrant inspections and rework of affected propellers.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes priority letter AD 95–21–01 to require an initial inspection for cracks in the propeller hub in accordance with a an improved dye penetrant inspection procedure, replacement of propellers with cracks that do not meet acceptable limits, rework of propellers with cracks that meet acceptable limits, and repetitive inspections of all affected propellers. The actions are required to be accomplished in accordance with the ASB described previously.

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 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 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–06.'' The postcard will be date stamped and returned to the commenter.

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

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 the following new airworthiness directive:

97–06–16 McCauley Propeller Systems: Amendment 39–9973. Docket No. 97–ANE–06. Supersedes AD 95–21–01.

Applicability: McCauley Propeller Systems 1A103/TCM series propellers with numeric serial number 770001 through 777390; and propellers with alpha-numeric serial number BC001 up to, but not including KC001; installed on but not limited to Cessna 152, Cessna A152, Reims F152, and Reims FA152 series aircraft. All alpha-numeric serial number propellers beginning with the letters ''B'' through ''J'' are affected by this AD.

Note 1: This airworthiness directive (AD) applies to each propeller 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 propellers 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 propeller separation due to hub fatigue cracking, which can result in loss of control of the aircraft, accomplish the following:

(a) Inspect propellers, and rework or replace with a serviceable part, as necessary, in accordance with Sections II and III of McCauley Propeller Systems Alert Service Bulletin (ASB) No. 221B, dated December 16, 1996, as follows:

(1) For propellers with 3,000 or more hours time-in-service (TIS), or unknown TIS, on the effective date of this AD, as follows:

(i) Perform an initial dye penetrant inspection in accordance with Section II of the ASB within 50 hours TIS since last visual inspection performed in accordance with priority letter AD 95–21–01.

(ii) Thereafter, perform repetitive dye penetrant inspections in accordance with Section II of the ASB at intervals not to

exceed 800 hours TIS, or 12 calendar months since last dye penetrant inspection, whichever occurs first.

(iii) If cracks are discovered that are not within the rework limits described in Section III of the ASB, prior to further flight remove the propeller from service and replace with a serviceable part.

(iv) If cracks are discovered that are within the rework limits described in Section III of the ASB, prior to further flight rework the propeller in accordance with Section III of the SB, and resume inspecting repetitively in accordance with paragraph (a)(1)(ii) of this AD.

(2) For propellers with less than 3,000 hours TIS on the effective date of this AD, upon accumulating 3,000 hours TIS perform the steps required by paragraph (a)(1)(i) through (a)(1)(iv) 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, Chicago 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, Chicago 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 Chicago Aircraft Certification Office.

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

(d) The actions required by this AD shall be accomplished in accordance with the following McCauley Propeller Systems ASB:

Document No.	Page	Date
221B	1–22	December 16, 1996.

Total Pages: 22.

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 McCauley Propeller Systems 3535 McCauley Drive, P.O. Drawer 5053, Vandalia, OH 45377–5053; telephone (513) 890–5246, fax (513) 890–6001. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment supersedes priority letter AD 95–21–01, issued September 29, 1995.

(f) This amendment becomes effective on April 24, 1997.

Issued in Burlington, Massachusetts, on March 11, 1997.

James C. Jones,

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

[FR Doc. 97–7594 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–63; Amendment 39–9957; AD 97–05–13]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International CFM56–5 series turbofan engines, that requires rework of the air turbine engine starter. This amendment is prompted by three reports of air turbine engine starter failures. The actions specified by this AD are intended to prevent an air turbine engine starter failure, which could result in damage to the engine electrical harnesses.

DATES: Effective June 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7132; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5 series turbofan engines was published in the **Federal Register** on April 15, 1996 (61 FR 16420). That action proposed to require rework of the air turbine engine starter.

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

Two commenters support the rule as proposed.

Although no comments were received regarding the compliance end-date stated in the compliance section of the proposed rule, the FAA has revised the calendar end-date to July 31, 1997, based upon the anticipated effective date of this AD.

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

The FAA estimates that 190 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,400 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $478,800.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

97–05–13 CFM International: Amendment 39–9957. Docket 95–ANE–63.

Applicability: CFM International (CFMI) CFM56–5 series turbofan engines, installed with air turbine engine starter, Part Number 301–781–201–0, installed on but not limited to Airbus A320 series aircraft.

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

Compliance: Required on or before July 31, 1997, unless accomplished previously.

To prevent an air turbine engine starter failure, which could result in damage to the engine electrical harnesses, accomplish the following:

(a) For air turbine engine starters, Part Number 301–781–201–0, that have not been previously reworked in accordance with any revision level of CFMI CFM56–5 Service Bulletin (SB) No. 80–003, rework the air turbine engine starter in accordance with the Accomplishment Instructions of CFMI CFM56–5 SB No. 80–003, Revision 5, dated October 25, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

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

Document No.	Pages	Revision	Date
CFM56–5 SB No. 80–003.	1–3	5	October 25, 1994.
	4–13	Original.	July 16, 1991.

Total Pages: 13.

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 CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215; telephone (513)552–2981, fax (513)552–2816. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

(e) This amendment becomes effective on June 3, 1997.

Issued in Burlington, Massachusetts, on February 24, 1997.

James C. Jones,

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

[FR Doc. 97–7977 Filed 4–3–97; 8:45 am]

[FR Doc. 97–7977 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–65; Amendment 39–9958; AD 97–06–01]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5, –5B, and –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CFM International CFM56–5, –5B, and –5C series turbofan engines, that requires initial and repetitive borescope inspections of the stage 1 disk bore of certain high pressure compressor rotor (HPCR) stage 1–2 spools for rubs and scratches, and replacement, if found rubbed or scratched, with a serviceable part. This AD also requires removal and replacement of certain stationary number 3 bearing aft air/oil seals as terminating action to the inspection program. This amendment is prompted by a report of an engine found with a rub on the forward corner of the HPCR stage 1 disk bore due to contact with the stationary number 3 bearing aft air/oil seal. The actions specified by this AD are intended to prevent a failure of the stage 1 disk of the HPCR stage 1–2 spool, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective June 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5, –5B, and –5C series turbofan engines was published in the **Federal Register** on June 4, 1996 (61 FR 28112). That action proposed to require initial and repetitive borescope inspections of the stage 1 disk bore of certain high pressure compressor rotor (HPCR) stage 1–2 spools for rubs and scratches, and replacement, if found rubbed or scratched, with a serviceable part. That action also proposed to require removal and replacement of certain stationary number 3 bearing aft air/oil seals as terminating action to the inspection program.

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

The commenter supports the rule as proposed.

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

There are approximately 131 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are no engines installed on U.S. registered aircraft that would be affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, it will take approximately 402 work hours to accomplish the required actions, and the average labor rate is $60 per work hour. Required parts will cost approximately $87,700 per engine. Based on these figures, the cost impact of the AD is estimated to be $111,820 per engine.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

97–06–01 CFM International: Amendment 39–9958. Docket 95–ANE–63.

Applicability: CFM International (CFMI) CFM56–5, –5B, and –5C series turbofan engines, installed on but not limited to Airbus A320, A321, and A340 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a failure of the stage 1 disk of the high pressure compressor rotor (HPCR) stage 1–2 spool, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For CFM56–5, –5B, and –5C engines that have a stationary number 3 bearing aft air/oil seal, Part Number (P/N) 1364M71G02, installed, inspect the stage 1 disk of the HPCR stage 1–2 spool in accordance with the Accomplishment Instructions of CFM56–5 Service Bulletin (SB) No. 72–440, CFM56–5B SB No. 72–064, or CFM56–5C SB No. 72–229, all Revision 2, dated June 23, 1995, as applicable, as follows:

(1) If the disk has not been previously inspected prior to the effective date of this AD, inspect prior to accumulating 2,200 cycles since new (CSN).

(2) If the disk has been previously inspected prior to the effective date of this AD, and the disk was found not to be rubbed or scratched, reinspect prior to accumulating 2,200 cycles since last inspection (CSLI).

(b) Thereafter, for disks that have been inspected in accordance with paragraph (a)(1) or (a)(2) of this AD, inspect in accordance with the Accomplishment Instructions of CFM56–5 SB No. 72–440, CFM56–5B SB No. 72–064, or CFM56–5C SB No. 72–229, all Revision 2, dated June 23, 1995, as applicable, at intervals not to exceed 2,200 CSLI.

(c) Remove from service HPCR stage 1–2 spools with rubbed or scratched stage 1 disks and replace with a serviceable part, as follows:

(1) For spools with less than 2,200 CSN on the effective date of this AD, at the next engine shop visit after the effective date of this AD, or prior to accumulating 2,200 CSN, whichever occurs first.

(2) For spools with 2,200 CSN or more on the effective date of this AD, at the next engine shop visit after the effective date of this AD, or prior to accumulating 2,200 CSLI, whichever occurs first.

(d) Remove from service stationary number 3 aft air/oil seals, P/N 1364M71G02, at the next engine shop visit after the effective date of this AD, and replace with a serviceable part. Compliance with this paragraph constitutes terminating action to the inspection requirements of paragraphs (a)(1), (a)(2), and (b) of this AD.

(e) For the purpose of this AD, a serviceable HPCR stage 1–2 spool is defined as a spool without a rub or scratch indication on the stage 1 disk, a P/N 1834M55G01 spool, or a spool that has accomplished the stage 1 disk rework in accordance with any revision level of CFM56–5 SB No. 72–442, CFM56–5B SB No. 72–066, or CFM56–5C SB No. 72–230, as applicable.

(f) For the purpose of this AD, a serviceable stationary number 3 bearing aft air/oil seal is defined as any seal other than a P/N 1364M71G02 seal.

(g) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into the shop for any reason.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(i) Special flight permits may be issued in accordance with §§ 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.

(j) The actions required by this AD shall be done in accordance with the following CFMI SBs:

Document No.	Pages	Revision	Date
CFM56–5 SB No. 72–440. Total pages: 9.	1–9	2	June 23, 1995.
CFM56–5B SB No. 72–064. Total pages: 9.	1–9	2	June 23, 1995.
CFM56–5C SB No. 72–229.	1–9	2	June 23, 1995.

Document No.	Pages	Revision	Date
Total Pages: 9.			

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 CFM International, Technical Publications Department, One Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

(k) This amendment becomes effective on June 3, 1997.

Issued in Burlington, Massachusetts, on February 27, 1997.

James C. Jones,

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

[FR Doc. 97–7979 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–131–AD; Amendment 39–9982; AD 97–07–08]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires the replacement of weight limitation placards in the aft main baggage bay and in the aft right stowage compartment with new placards indicating lower maximum weight limits. It also requires a revision of the Airplane Flight Manual to delete references to the current higher weight limits for these areas. This amendment is prompted by a report indicating that existing weight limitations could result in failure of the front bulkhead of the aft main baggage bay and doors of the aft right stowage compartment during emergency dynamic landing conditions. The actions specified by this AD are intended to prevent such failure, which consequently could result in injury to passengers and flight crew, and hinder evacuation of the airplane through the exit adjacent to this bulkhead.

DATES: Effective May 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 9, 1997.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes was published in the **Federal Register** on December 6, 1996 (61 FR 64643). That action proposed to require removal of the weight limitation placards in the aft main baggage bay and aft right stowage compartment, and replacement with new placards that establish lower maximum weight limits in these areas. It also proposed to require a revision to the AFM for certain airplanes that would remove references to higher weight limits in effect before the new placards are installed.

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

Support for the Proposal

One commenter supports the proposed AD.

Request to Withdraw Proposal

One commenter requests that the proposal be withdrawn since there would be no U.S. airplanes subject to it. The commenter points out that the applicability statement of the proposal indicates that airplanes listed in Jetstream Service Bulletin J41–11–004 would be subject to the AD. However, that service bulletin states that it does not affect any airplanes on which the procedures specified in Jetstream Service Bulletin J41–53–006 have been accomplished. The commenter states that only 18 U.S. airplanes would be applicable to the proposed AD, and all of those airplanes are owned by one U.S. operator (the commenter). All of these airplanes have been modified in accordance with Jetstream Service Bulletin J41–53–006. In light of this, the proposal would not be applicable to any U.S. airplane and, therefore, should be withdrawn.

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

First, the FAA acknowledges that the Cost Impact section of the preamble to the notice erroneously indicated that 44 airplanes would be affected by the proposed AD; although this number was in error, the correct number of airplanes affected is 25, not 18, as stated by the commenter. (The referenced Jetstream Service Bulletin J41–11–014 also lists a total of 25 possibly affected airplanes.) Accordingly, the Cost Impact information, below, has been corrected to show that 25 airplanes are affected by the requirements of the AD.

Second, the FAA has no evidence to prove that all 25 affected airplanes have been modified in accordance with Jetstream Service Bulletin J41–53–006, and thus would not be subject to the AD.

Third, even if all affected airplanes have been modified in accordance with Jetstream Service Bulletin J41–53–006, the issuance of this AD is still necessary to make it mandatory that the correct placards are installed and the AFM revision is accomplished on all affected airplanes on the U.S. register. This AD is also required to ensure that, if the modification described in Service Bulletin J41–53–006 is removed from a modified airplane at a later date, the placards and AFM revision required by this AD are implemented.

Conclusion

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

Cost Impact

The FAA estimates that 25 Jetstream Model 4101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on

U.S. operators is estimated to be $1,500, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–07–08 Jetstream Aircraft Limited: Amendment 39–9982. Docket 96–NM–131–AD.

Applicability: Model 4101 airplanes, as listed in Jetstream Service Bulletin J41–11–014, dated January 18, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 failure of the front bulkhead of the aft main baggage bay and the doors of the aft right stowage compartment during emergency landing dynamic conditions, which consequently could result in injury to passengers and flight crew and hinder evacuation of the airplane through the exit adjacent to the bulkhead, accomplish the following:

(a) For all airplanes: Within 30 days after the effective date of this AD, replace the weight limitation placards in the aft main baggage bay and aft right stowage compartment with new placards indicating lower maximum weight limitations, in accordance with Jetstream Service Bulletin J41–11–014, dated January 18, 1996.

(b) For airplanes having constructor numbers 41041 through 41043 inclusive, 41045, 41055, 41058, 41059, 41063, and 41064: Within 30 days after the effective date of this AD, after accomplishment of the requirements of paragraph (a) of this AD, revise the FAA-approved Airplane Flight Manual by removing Amendment P25, in accordance with Jetstream Service Bulletin J41–11–014, dated January 18, 1996.

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

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

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

(e) The actions shall be done in accordance with Jetstream Service Bulletin J41–11–014, dated January 18, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 9, 1997.

Issued in Renton, Washington, on March 26, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–8265 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–101–AD; Amendment 39–9983; AD 97–07–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires repetitive checks and testing of certain equipment that regulates the flow of fuel from wing tank 2A to the number 2 engine. This amendment also requires replacement of this equipment with equipment that has been designed to prevent incorrect installation; this replacement is considered to be terminating action for the repetitive equipment checks and tests. This amendment is prompted by reports indicating that the incorrect installation of this equipment has caused the flight crew to shut off, rather than open, certain valves that regulate the flow of fuel from between this tank and engine. The actions specified by this AD are intended to detect and rectify incorrect installations, which could result in the flight crew inadvertently shutting off the flow of fuel to the engine, and consequent engine failure during flight.

DATES: Effective May 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 9, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex,

France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on January 13, 1997 (62 FR 1695). That action proposed to require repetitive checks of the control knobs on isolation valve and crossfeed valve control unit 5QB; and repetitive tests of this control unit. As terminating action for these repetitive checks and tests, that action also proposed to require that operators replace these knobs and this control unit with knobs and a control unit that have been modified.

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

The commenter advises that it does not operate the affected Airbus series aircraft and, therefore, is not affected by this rule.

Conclusion

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

Cost Impact

The FAA estimates that 13 Airbus Model A300 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish each required check and test cycle, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required check and test on U.S. operators is estimated to be $780, or $60 per airplane, per check/test cyle.

It will take approximately 1 work hour per airplane to accomplish the required replacement of the control knobs and control unit, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,043 per airplane. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $14,339, or $1,103 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–07–09 **Airbus Industrie:** Amendment 39–9983. Docket 96–NM–101–AD.

Applicability: Model A300 series airplanes, as listed in the Airbus service documents referenced in paragraphs (a), (b), and (c) of this AD; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from inadvertently shutting off the flow of fuel from wing tank 2A to the number 2 engine, due to the incorrect installation of the isolation valve and crossfeed valve control unit 5QB, and the consequent failure of the engine, accomplish the following:

(a) *For airplanes listed in Airbus A300 All Operator Telex (AOT) 28–03, dated June 6, 1991:* Within 30 days after the effective date of this AD, perform a check and functional test of the control knob configurations for the isolation valve and crossfeed valve control unit 5QB, in accordance with Airbus AOT 28–03, dated June 6, 1991.

(1) Repeat the check and test thereafter at intervals not to exceed 500 hours time-in-service, and prior to further flight after any maintenance action is performed on the control unit.

(2) Any unit that does not successfully pass the check/functional test, must be repaired or otherwise rectified prior to further flight, in accordance with the AOT.

(b) *For airplanes listed in Airbus Service Bulletin A300–28–055, Revision 3, dated December 19, 1991, as amended by Service Bulletin Change Notice 3.A., dated March 16, 1992:*

Within 2 years after the effective date of this AD, replace the crossfeed and isolation valve control unit 5QB with a modified unit, in accordance Airbus Service Bulletin A300–28–055, Revision 3, dated December 19, 1991, as amended by Service Bulletin Change Notice 3.A.

Note 2: Airbus Service Bulletin A300–28–055, Revision 3, references L'équipment et La Construction Electrique (ECE) Service Bulletins 28–195 and 28–196, both dated August 31, 1983, as additional sources of procedural information for replacement of the control unit.

(c) *For airplanes listed in Airbus Service Bulletin A300–28–0061,*

Revision 1, dated March 14, 1992: Within 2 years after the effective date of this AD, replace the control knobs on the crossfeed and isolation valve control unit 5QB with new knobs, in accordance with Airbus Service Bulletin A300–28–0061, Revision 1, dated March 14, 1992.

Note 3: Airbus Service Bulletin A300–28–0061, Revision 1, references ECE Service Bulletins 28–191, dated July 26, 1982, and 28–228, dated November 1, 1991, as additional sources of procedural information for replacement of the control knobs.

(d) Accomplishment of both of the replacements specified in paragraphs (b) and (c) of this AD constitutes terminating action for the repetitive checks and tests required by paragraph (a) of 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, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(g) The actions shall be done in accordance with the following Airbus service documents, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
Airbus All Operator Telex (AOT) 28–03, June 6, 1991	1–3		June 6, 1991
Airbus Service Bulletin A300–28–055, Revision 3, December 19, 1991	1,4	3	Dec. 19, 1991.
	2, 3, 5, 6	2	Sept. 19, 1991.
	7, 9, 10, 13	Original	Oct. 16, 1983.
	8, 11, 12	1	July 2, 1991.
Airbus Service Bulletin A300–28–055, Change Notice 3.A., March 16, 1992	1–2		Mar. 16, 1992
Airbus Service Bulletin A300–28–0061, Revision 1, March 14, 1992	1	1	Mar. 14, 1992.
	2–7	Original	Jan. 23, 1992.

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

(h) This amendment becomes effective on May 9, 1997.

Issued in Renton, Washington, on March 26, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–8266 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–SW–17-AD; Amendment 39–9980; AD 97–07–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 412 helicopters, that currently requires a daily inspection of certain swashplate support assemblies. It also requires a reduction in VNE, and installation of appropriate airspeed indicator markings and a placard. This amendment requires the same actions required by the existing priority letter AD, but restricts the applicability to the Model 412 helicopters with a certain steel main rotor control swashplate support assembly (steel swashplate support assembly) installed. This amendment also allows the installation of an improved main rotor control swashplate assembly that terminates the requirements of this AD. This amendment is prompted by reported cracking and in-service failures of certain steel swashplate support assemblies. The actions specified by this AD are intended to prevent failure of the steel swashplate support assembly that could result in loss of main rotor control and subsequent loss of control of the helicopter.

DATES: Effective May 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 9, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, Federal Aviation Administration, Southwest Region, Rotorcraft Certification Office, ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, FAX (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding priority letter AD 92–03–13, issued January 31, 1992, which is applicable to Bell Helicopter Textron, Inc. Model 412 helicopters, was published in the **Federal Register** on October 25, 1996 (61 FR 55231). That action proposed to require a daily inspection of certain steel main rotor control swashplate support assemblies, a reduction in VNE, and installation of appropriate airspeed markings and a placard. It also proposed an optional installation of an improved steel main rotor control swashplate support assembly or an aluminum swashplate support assembly, that, when installed, constitutes a terminating action for the requirements of this AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with one change—a reference to a specific part of a service bulletin was added for clarification. The FAA has determined that this change will neither increase the economic burden on any

operator nor expand the scope of the AD.

The FAA estimates that 40 helicopters of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. The aluminum swashplate support assembly, P/N 412–010–443–101 or –109 costs $4,526. The steel swashplate support assembly, P/N 412–010–453–105, costs $9,234. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $417,360, if all the swashplates in the fleet are replaced with support assemblies, P/N 412–010–453–105.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9980, to read as follows:

AD 27–07–06 Bell Helicopter Textron, Inc.: Docket No. 96–SW–17–AD. Supersedes priority letter AD 92–03–13, issued January 31, 1992, Docket No. 92–ASW–31.

Applicability: Model 412 helicopters, with steel main rotor control swashplate support assembly (steel swashplate support assembly), part number (P/N) 412–010–453–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the steel swashplate support assembly that could result in loss of main rotor control and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight after the effective date of this AD, and thereafter, before the first flight of each day, visually inspect, with an inspection mirror and a bright light, the forward and aft clevis areas of the steel swashplate support assembly, part number (P/N) 412–010–453–101, in accordance with Part I of Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 412–92–57, Revision A, dated January 30, 1992.

(b) Before further flight after the effective date of this AD, install a red radial arc on each airspeed indicator to prohibit airspeeds above 110 knots. Near the pilot's airspeed indicator, install a placard made of material that is not easily erased, disfigured, or obscured that contains the following statement in lettering that is 0.2 inch minimum in height: ''V_{NE} not to exceed 110 KIAS or V_{NE} from the airspeed limitation placard, whichever is less.''

Note 2: ASB No. 412–92–58, dated January 27, 1992, contains information on the airspeed limitation.

(c) If a crack is found, before further flight, replace the steel swashplate support assembly, P/N 412–010–453–101, with an airworthy part.

(d) Installation of an improved steel swashplate support assembly, P/N 412–010–453–105, or aluminum swashplate support assembly, P/N 412–010–443–101 or -109, in accordance with the Accomplishment Instructions of ASB 412–92–61, dated May 14, 1992, constitutes a terminating action for the requirements of this AD, and the red radial arc on each airspeed indicator and the airspeed placard installed as a result of this AD may be removed.

(e) An alternative method of compliance or an adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Rotorcraft Certification Office. Operators shall submit their requests through an FAA principal maintenance inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(g) The inspections, installation, and replacement, if necessary, shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 412–92–57, Revision A, dated January 30, 1992, or ASB 412–92–61, dated May 14, 1992, as appropriate. 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 Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 9, 1997.

Issued in Fort Worth, Texas, on March 14, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–8426 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–SW–36–AD; Amendment 39–9981; AD 97–07–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Ltd. Model 206L, L–1, L–3, and L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 206L, L–1, L–3, and L–4 helicopters, that requires creation of a component history card using a Retirement Index Number (RIN) system, establishing a system for tracking increases to the accumulated RIN, and a maximum accumulated RIN for certain main rotor masts (masts) and main rotor trunnions (trunnions). This amendment is prompted by fatigue analyses and tests that show certain masts and trunnions fail sooner than originally anticipated because of the unanticipated higher number of external load lifts and takeoffs (torque events) performed with those masts and trunnions in addition to the time-in-service (TIS) accrued under other operating conditions. The actions specified by this AD are intended to prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter.

DATES: Effective May 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 9, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, A Division of Textron Canada Ltd. 12,800 Rue de L'Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5159, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTC Model 206L, 206L–1, 206L–3, and 206L–4 helicopters was published in the **Federal Register** on November 14, 1996 (61 FR 58355). That action proposed to require, within the next 100 hours TIS, creation of a component history card using the RIN system for certain masts and trunnions; and establishing a system for tracking increases to the accumulated RIN. That action also proposed to establish a retirement life for trunnions based solely on a RIN of 24,000, and a mast retirement life based on a maximum RIN of 44,000 or a maximum number of flight hours, whichever occurs first.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for the parenthetical insertion of the number of RIN's in paragraphs (d) and (e). The FAA has determined that this change will neither increase the economic burden on any operator nor expand the scope of the AD.

The FAA estimates that 711 helicopters of U.S. registry will be affected by this AD, that it will take approximately (1) 8 work hours per helicopter to replace the mast and 10 work hours per helicopter to replace the trunnion due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts will cost approximately $9,538 per mast and $2,083 per trunnion. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,016,989, and each subsequent year to be $1,945,889. These costs assume replacement of the mast and trunnion in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 97–07–07 Bell Helicopter Textron, a Division of Textron Canada Ltd.: Amendment 39–9981. Docket No. 95–SW–36–AD.

Applicability: Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, with main rotor mast (mast), part number (P/N) 206–040–535–001, –005, –101, or –105, installed, or main rotor trunnion (trunnion), P/N 206–011–120–103, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the affected mast and trunnion.

(b) Determine the accumulated Retirement Index Number (RIN) to date based on the number of takeoffs and external load lifts (torque events) for parts in service in accordance with paragraphs 1 and 2 of the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 206L–94–99, Revision A, dated May 1, 1995. Record this accumulated RIN on the component history card.

(c) After complying with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of the number of external load lifts and the number of takeoffs performed and at the end of each day's operations, increase the accumulated RIN on the component history cards as follows:

(1) For the trunnion,

(i) Increase the RIN for the Model 206, 206L–1, and 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

(2) For the mast, increase the RIN for the Model 206L, 206L–1, 206L–3, and 206L–4 helicopters by 1 for each torque event.

(d) Remove the trunnion from service on or before attaining the maximum accumulated RIN (24,000) in accordance with Table 1 of the Accomplishment Instructions of Bell Helicopter Textron, Inc. ASB No. 206L–94–99, Revision A, dated May 1, 1995.

(e) Remove the mast from service on or before attaining the maximum accumulated RIN (44,000) or the flight hour service life limit, whichever occurs first, in accordance with Table 2 of the Accomplishment Instructions of Bell Helicopter Textron, Inc. ASB No. 206L–94–99, Revision A, dated May 1, 1995.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(h) The creation of the component history card, documentation, and removal of the trunnion and mast shall be done in accordance with Bell Helicopter Textron, Inc. ASB No. 206L–94–99, Revision A, dated May 1, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, A Division of Textron Canada Ltd. 12,800 Rue de L'Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(i) This amendment becomes effective on May 9, 1997.

Issued in Fort Worth, Texas, on March 14, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–8425 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ASO–29]

Establishment of Class E Airspace; Thomson, GA, and Amendment of Class E Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Thomson, GA, for the Thomson-McDuffie Airport. Currently the Class E airspace area for the airport is included in the Augusta, GA, Class E airspace area. The McDuffie NDB was relocated from an off-airport to an on-airport site. As a result the NDB Standard Instrument Approach Procedure (SIAP) has been revised. The subsequent airspace review revealed that less Class E airspace was now required for the Thomson-McDuffie Airport. As reduced the Class E airspace area for the Thomson-McDuffie Airport no longer intersects the remainder of the Augusta Class E airspace area. Therefore, it is necessary to establish stand alone Class E airspace extending upward from 700 feet above the surface (AGL) at Thomson, GA, for the Thomson-McDuffie Airport and amend the Augusta, GA, Class E airspace area by removing the airspace previously required for the Thomson-McDuffie Airport.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On January 24, 1997, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at Thomson, GA, and amending Class E airspace at Augusta, GA, (62 FR 3629). This action will provide adequate Class E airspace for IFR operations at Thomson-McDuffie Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. 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 stand-alone Class E airspace at Thomson, GA, for the Thomson-McDuffie Airport and amends Class E airspace at Augusta, GA, by removing the airspace previously required for the Thomson-McDuffie Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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. 106(g); 40103, 40113, 40120; EO 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 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 above the surface of the earth.

* * * * *

ASO GA E5 Thomson, GA [New]

Thomson-McDuffie Airport, GA
(Lat. 33°31′47″ N. long. 82°31′00″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Thomson-McDuffie Airport.

* * * * *

ASO GA E5 Augusta, GA [Revised]

Augusta, Bush Field, GA
(Lat. 33°22′12″ N. long. 81°57′52″ W)
Bushe NDB
(Lat. 33°17′13″ N. long. 81°56′49″ W)
Daniel Field
(Lat. 33°27′59″ N. long. 82°02′21″ W)
Burke County Airport
(Lat. 33°02′28″ N. long. 82°00′14″ W)
Burke County NDB
(Lat. 33°02′33″ N. long. 82°00′17″ W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Bush Field and within 8 miles west and 4 miles east of Augusta ILS localizer south course extending from the 8.2-mile radius to 16 miles south of the Bushe NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB.

* * * * *

Issued in College Park, Georgia, on March 24, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–8614 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AWP–30]

Amendment of Class E Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on February 25, 1997 (62 FR 8369), Airspace Docket No. 96–AWP–30.

EFFECTIVE DATE: 0901 UTC March 27, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–4577, Airspace Docket No. 96–AWP–30, published on February 25, 1997 (62 FR 8369), revised the description of the Class E airspace area at Victorville, CA. An error was discovered in the geographic coordinates for the Victorville, CA, Class E airspace area. This action corrects that error.

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace are at Victorville, CA, as published in the **Federal Register** on February 25, 1997, **Federal Register** Document 97–4577; page 8370, column 2), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP CA E5 Victorville, CA

By removing ''(lat. 34°35′67″ N., long. 117°22′93″ W.)'' and substituting ''(lat. 34°35′40″ N., long. 117°22′56″ W.)''.

* * * * *

Issued in Los Angeles, California, on March 5, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–8500 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33–7408, 34–38447, 35–26696, 39–2350, IC–22588, and IA–1625; File No. S7–14–97]

Penalty-Reduction Policy for Small Entities

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement; request for comments.

SUMMARY: The Securities and Exchange Commission is issuing a statement of its penalty-reduction policy for small entities as required by the Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104–121, 110 Stat. 857 (1996). The Commission also requests comments on the policy. After the comment period has closed and the Commission has gained experience in applying the policy, the Commission intends to re-evaluate the policy in light of its experience and the comments of interested persons.

DATES: Effective *March 29, 1997.* Interested persons may submit comments on the policy on or before *December 31, 1997.*

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth St. N.W., Washington, D.C. 20549. Comment letters also may be submitted electronically to the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–14–97; this file number should be included on the subject line if E:mail is used. All comment letters will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth St., N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Joan McKown (202–942–4530) or Susan Mathews (202–942–4737), Office of the Chief Counsel, Division of Enforcement, or Amy Kroll (202–942–0927) or Anne Sullivan (202–942–0954), Office of the General Counsel.

SUPPLEMENTARY INFORMATION: The Small Business Regulatory Fairness Act (''SBREFA'' or ''the Act'') was enacted on March 29, 1996.[1] SBREFA seeks to improve the regulatory climate for small entities[2] by, among other things:

- Expanding the extent to which the rule making process must include evaluation of the impact of proposed rules (and rule changes) on small entities;[3]

[1] Pub. L. No. 104–121, 110 Stat. 857 (codified in scattered sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. § 601) (1996).

[2] The definition of ''small entity'' under SBREFA is the same as the definition of ''small entity'' under the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* (''Reg. Flex. Act''). SBREFA § 221(1). The Reg. Flex. Act defines ''small entity'' to include ''small business.'' Pursuant to the Reg. Flex. Act, 5 U.S.C. § 601(3), the Commission has adopted appropriate definitions of ''small business'' for purposes of the Reg. Flex. Act. *See infra* n.10.

[3] 5 U.S.C. §§ 603(a), 604, and 605(b), codifying SBREFA §§ 241 and 243.

- Expanding the rights of action for small businesses to seek judicial review of rules impacting small entities; [4]
- Requiring agencies to establish small entity penalty reduction or waiver policies; [5] and
- Directing agencies to expand their efforts to provide formal and informal guidance to small entities.[6]

In this release, the Commission announces a small entity penalty-reduction policy (''Penalty-Reduction Policy'' or ''Policy'') as mandated by SBREFA and solicits comment on the Policy.

SBREFA provides a general standard for penalty-reduction policies:

> Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and, under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.[7]

A statement entered into the Congressional Record after enactment of SBREFA explains that agencies have ''flexibility to tailor their specific programs to their missions and charters'' and instructs agencies ''to develop the boundaries of their program and the specific circumstances for providing for a waiver or reduction of penalties.'' [8] To that end, SBREFA specifies that a penalty-reduction policy adopted by an agency may be subject to the requirements or limitations of other applicable statutes. SBREFA also lists six possible exclusions or conditions that an agency may incorporate in its policy.[9]

The Commission has reviewed the current requirements of the federal securities laws, its current practice in assessing penalties on small entities, and the appropriate conditions and exclusions for a penalty-reduction policy for small entities that violate the federal securities laws. On the basis of that review, the Commission announces its Penalty-Reduction Policy for small entities. Although the Commission's informal practice has been to consider some or all of the factors contained in the policy in its penalty analysis for all entities, in accord with the mandates of SBREFA, the Commission sets forth in this release a formal policy specifically for small entities that embodies these factors. The Commission also invites comments on this Policy.

I. Penalty-Reduction Policy

A. Text of Policy

The text of the policy follows:

The Commission's policy with respect to whether to reduce or assess civil money penalties against a small entity is:

(a) The Commission will consider on a case-by-case basis whether to reduce or not assess civil money penalties against a small entity. In determining whether to reduce or not assess penalties against a specific small entity, the following considerations will apply:

(1) Except as provided in paragraph (a)(3) below, penalty reduction will not be available for any small entity if:

(i) The small entity was subject previously to an enforcement action;

(ii) Any of the small entity's violations involved willful or criminal conduct; or

(iii) The small entity did not make a good faith effort to comply with the law.

(2) In considering whether the Commission will reduce or refrain from assessing a civil money penalty, the Commission may consider:

(i) The egregiousness of the violations;

(ii) The isolated or repeated nature of the violations;

(iii) The violator's state of mind when committing the violations;

(iv) The violator's history (if any) of legal or regulatory violations;

(v) The extent to which the violator cooperated during the investigation;

(vi) Whether the violator has engaged in subsequent remedial efforts to mitigate the effects of the violation and to prevent future violations;

(vii) The degree to which a penalty will deter the violator or others from committing future violations; and

(viii) Any other relevant fact.

(3) The Commission also may consider whether to reduce or not assess a civil money penalty against a small entity, including a small entity otherwise excluded from this policy under paragraphs (a)(1)(i)–(iii) above, if the small entity can demonstrate to the Commission's satisfaction that it is financially unable to pay the penalty, immediately or over a reasonable period of time, in whole or in part.

(4) For purposes of this policy, an entity qualifies as ''small'' if it is a small business or small organization as defined by Commission rules adopted for the purpose of compliance with the Regulatory Flexibility Act.[10] An entity not included in these definitions will be considered ''small'' for purposes of this policy if it meets the total asset amount that applies to issuers as set forth in Rule 157(a) of the Securities Act of 1933.[11]

(b) The foregoing policy does not create a right or remedy for any person. This policy shall not apply to any remedy that may be sought by the Commission other than civil money penalties, whether or not such other remedy may be characterized as penal or remedial.

B. Penalties Eligible for Reduction

The Policy will apply only to civil money penalties. It will not apply to any remedy that the Commission may seek other than civil money penalties, whether or not such other remedy may be characterized as penal or remedial.[12] SBREFA provides that an agency may consider an entity's ''ability to pay,'' and requires agencies to report to Congress on the ''total amount of penalty reductions.'' The Commission interprets these statements to refer to civil money penalties. Committee statements that were included in the Congressional Record after enactment of SBREFA also support limiting penalty reduction policies to civil money penalties.[13] Moreover, an Environmental Protection Agency (''EPA'') policy cited

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[4] 5 U.S.C. § 611, codifying SBREFA § 242.

[5] SBREFA § 223.

[6] SBREFA §§ 212, 213, 214 (codified at 15 U.S.C. § 648(c)(3)), and 215. In a companion release, the Commission is adopting an informal guidance program as required by SBREFA. *Informal Guidance Program for Small Entities,* Securities Act Rel. No. 33–7407 (Mar. 27, 1997). The Commission previously, on January 28, 1997, adopted small entity compliance guides as required by SBREFA. Securities Act Rel. No. 7342, 62 FR 4104 (Jan. 28, 1997) (codified at 17 CFR 202.8).

[7] SBREFA § 223(a). SBREFA also establishes that ''[i]n any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.'' *Id.* § 213(a).

[8] ''Small Business Regulatory Enforcement Fairness Act—Joint Managers Statement of Legislative History and Congressional Intent,'' 142 Cong. Rec. S3244 (daily ed. Mar. 29, 1996).

[9] SBREFA § 223(b).

[10] Pursuant to the Reg. Flex. Act, 5 U.S.C. § 601(3), the Commission has adopted appropriate definitions of ''small business'' for purposes of the Reg. Flex. Act. Based on an analysis of the language and legislative history of the Reg. Flex. Act, Congress does not appear to have intended that Act to apply to natural persons (as opposed to individual proprietorships) or to foreign entities. The Commission understands that staff at the Small Business Administration (SBA) have taken the same position. Telephone conversation with Gregory J. Dean, Jr., Assistant Chief Counsel for Finance and Programs, SBA Office of Advocacy (Mar. 13, 1997). *See* 17 CFR 270.0–10, 275.0–7, 240.0–10, 230.157, 250.110, and 260.0–7. The Commission recently proposed amendments to certain of these definitions. *Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933,* Securities Act Rel. No. 7383, 62 FR 4106 (Jan. 28, 1997). The Commission extended the comment period for the proposed amendments to April 30, 1997, 62 FR 13356 (Mar. 20, 1997).

[11] At present, this threshold is $5 million. Thus, non-regulated entities, such as general partnerships, privately held corporations or professional service organizations, with assets of $5 million or less may qualify for penalty-reduction.

[12] *See Johnson* v. *SEC,* 87 F.3d 484 (D.C. Cir. 1996) (six-month suspension from supervisory positions at broker-dealers constitutes a penalty for the purposes of 28 U.S.C. § 2462).

[13] ''Small Business Regulatory Enforcement Fairness Act: Views of the House Committees of Jurisdiction on the Congressional Intent Regarding the 'Small Business Regulatory Enforcement Fairness Act of 1996,''' 142 Cong. Rec. E572 (daily ed. Apr. 19, 1996); 142 Cong. Rec. at S3244.

in the statements as an example of an appropriate policy is limited to civil money penalties.[14]

C. Other Relevant Statutes

The Policy is consistent with the statutory provisions in the Securities Enforcement Remedies and Penny Stock Act of 1990,[15] the Insider Trading Sanctions Act of 1984,[16] and other statutes [17] that grant the Commission the authority to impose civil money penalties for a broad range of violations of the federal securities laws.[18] These Acts give the Commission flexibility to tailor sanctions and recommend factors that guide the Commission's discretion in imposing money penalties. Although each decision is based on fact-specific circumstances, with respect to each violator the Commission presently may consider: (1) the violator's financial ability to pay a penalty; (2) whether the violator is a repeat offender; (3) cooperation provided during the investigation; (4) subsequent remedial efforts; (5) whether the violation was willful; (6) the degree to which a penalty will deter future violations; and (7) any other relevant fact.[19]

D. Exclusions From and Conditions to the Penalty-Reduction Policy

Section 223(b) of SBREFA lists six possible exclusions or conditions that agencies may incorporate in their penalty-reduction policies, some of which are similar to those factors the Commission may consider when fashioning a penalty under the statutes described above. For the reasons discussed below, the Commission incorporates in the Policy three of the suggested exclusions, which are contained in paragraph (a)(1) of the Policy, but does not incorporate the other three.

1. Multiple Enforcement Actions

SBREFA permits an agency to exclude from its policy small entities that have been subject to multiple enforcement actions. The Commission historically has made a similar determination under Section 21B(c) of the Exchange Act when considering whether a penalty is in the public interest.[20] The Commission believes it is appropriate to deny access to the Penalty-Reduction Policy to small entities against which the Commission previously has filed an action. Therefore, the Policy contains this exclusion.

2. Willful or Criminal Conduct

SBREFA permits an agency to exclude from its policy a small entity whose violation involves willful or criminal conduct. Thomas J. Bliley, Jr., Chairman of the House Commerce Committee, explained in a statement entered into the Congressional Record after enactment of SBREFA that:

> We will not tolerate, and this bill does not create, any free pass for financial fraud. Specifically, Section 323(b)(4) of the bill expressly excludes ''violations involving willful or criminal conduct'' from the small business enforcement variance. In the context of the federal securities laws, I understand ''willful'' to have the longstanding judicial construction as expressed in, for example, *Tager* v. *Securities and Exchange Commission*, 344 F.2d 5, 7 (2d. Cir. 1965).[21]

Consistent with Chairman Bliley's statement, the Policy is not available to small entities if their violations involve willful or criminal conduct.

3. Good Faith Compliance

SBREFA permits an agency to require that a small entity has made a good faith effort to comply with the law in order for the small entity to avail itself of the penalty reduction policy. The Policy contains this exclusion. Under the Policy, a small entity may qualify for penalty reduction only if the Commission has not alleged that its actions were undertaken in bad faith and if the entity proffers evidence satisfactory to the Commission that it made a ''good faith'' effort to comply with the securities laws.

4. Reasonable Correction Period

SBREFA permits an agency to condition the availability of penalty reduction on a small entity's correction of a violation within a reasonable time period. If a small entity violates the securities laws, the violation cannot be ''undone.'' Rather, the Commission's enforcement program focuses on stopping current violative conduct or preventing future conduct through the use of injunctions and temporary restraining orders, and by recovering ill-gotten gains in the form of disgorgement or by requiring undertakings to improve compliance procedures at firms. The Office of Compliance Inspections and Examinations (''OCIE'') issues deficiency letters to regulated entities found to have weaknesses in their compliance systems and or to have violated applicable rules and regulations. Depending on the nature of violations found, however, even if an entity corrects the violations, OCIE may make an enforcement referral in an effort to deter future violations by the entity. Because enforcement action is initiated when a violation is particularly egregious, or when an entity has failed to correct adequately its violations, penalty reduction for correcting a violation that is the basis of an enforcement action would send the wrong message to regulated entities. Consequently, the Commission is not including this condition in the Policy.

5. Compliance Assistance Program

SBREFA also permits an agency to apply penalty reduction to violations discovered through an entity's participation in a compliance assistance or audit program operated or supported by the agency or a state.[22] Specifically, some agencies, for example the Occupational Safety and Health Administration and EPA, have offices that will audit, and pass judgment on, a regulated entity's compliance program. SBREFA suggests that agencies could consider applying their penalty reduction policies to small entity violations found in the course of such a compliance audit. Although various divisions within the Commission provide regulatory guidance, the Commission does not operate a formal ''compliance assistance or audit program.'' [23] Rather than specify how every regulated entity should structure its compliance program, the Commission sets standards and then relies on the ability of each regulated entity, and when applicable its self-regulatory organization, to determine how best to implement its compliance

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[14] *See* EPA, *Policy on Compliance Incentives for Small Business*, 61 FR 27984 (June 3, 1996).

[15] Pub. L. 101–429, 104 Stat. 931 (1990) (codified in scattered sections of 15 U.S.C.) (''Remedies Act'').

[16] Pub. L. No. 98–376, 98 Stat. 1264 (1984) (codified in scattered sections of 15 U.S.C.) (''Insider Trading Act'').

[17] *See, e.g.*, Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677 (1988) (codified in scattered sections of 15 U.S.C.).

[18] *See* section 20(d)(2) of the Securities Act of 1933 (civil actions) (15 U.S.C. 77t(d)(2)); sections 21(d)(3) (civil actions), 21A (insider trading actions), and 21B (administrative proceedings) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. §§ 78u(d)(3), 78u–1, and 78u–2); sections 203(i)(2) (administrative proceedings) and 209(e) (civil actions) of the Investment Advisers Act of 1940 (15 U.S.C. §§ 80b–3(i)(2) and 80b–9(e)); and sections 9(d) (administrative proceedings) and 42(e) (civil actions) of the Investment Company Act of 1940 (15 U.S.C. §§ 80a–9(d) and 80a–41(e)).

[19] *See, e.g.*, section 21B(c)(1)–(6) of the Exchange Act (15 U.S.C. § 78u–2(c)(1)–(6)); *see also SEC* v. *Brumfield et al.*, SEC Lit. Rel. No. 14,956 (June 20, 1996) (penalty not imposed in light of respondent's cooperation).

[20] Under this section, the Commission will consider whether the entity previously violated the federal or state securities laws or rules.

[21] ''Contract with America Advancement Act of 1996,'' Speech of Hon. Thomas J. Bliley, Jr., 142 Cong. Rec. E591–92 (daily ed. Apr. 19, 1996).

[22] SBREFA § 223(b)(2).

[23] Inspections and examinations by OCIE do not constitute formal compliance assistance or audit programs.

program, based on the nature of its business. Because the Commission does not have a compliance program of the type described in SBREFA, this condition is not in the Policy. Notably, however, as a general matter, the Commission does take into consideration compliance efforts and gives appropriate weight to the existence of effective compliance procedures both in making prosecutorial decisions regarding bringing charges and in determining sanctions or penalties.

6. Health, Safety or Environmental Threats

Finally, SBREFA mentions excluding from a penalty reduction policy those violations ''that pose serious health, safety or environmental threats.'' The Commission does not regulate health, safety or environmental entities. Therefore, this exclusion is not in the Policy.

E. Elements the Commission May Consider When Assessing Whether to Reduce or Not Assess Penalties

Consistent with the Commission's practice and the statutes which enable the Commission to assess money penalties, paragraph (a)(2) of the Policy identifies eight elements the Commission may consider when determining whether to reduce or not assess a civil money penalty against a small entity. Although derived from considerations the Commission already applies when determining whether, and the level at which, to apply penalties,[24] the Policy gives the Commission discretion to consider any or all of these in any case where the Policy may apply.

F. Ability to Pay

SBREFA permits an agency to consider ability to pay in determining penalty assessments on small entities.[25] Since passage of the Remedies Act in 1990, the Commission has complied with the spirit of SBREFA, considering an entity's ability to pay before setting a penalty amount. Generally, the Commission seeks money penalties in an amount that, after careful examination of financial information provided by the violator, the Commission determines the violator is able to pay. When analyzing appropriate sanctions in a particular case, the Commission typically will direct its staff to examine an entity's ability to pay disgorgement first; if the entity has the ability to pay a penalty after paying disgorgement, the Commission will demand an appropriate penalty amount based on the entity's ability to pay.[26]

Consistent with this practice, paragraph (a)(3) of the Policy makes penalty-reduction available to small entities that may otherwise be excluded under paragraph (a)(1). A small entity must demonstrate to the Commission's satisfaction that it is unable financially to pay a penalty before the Commission will consider whether penalty-reduction is warranted. The Policy establishes that the Commission, in its sole discretion, may consider the eight factors in paragraph (a)(2) of the Policy as well as reviewing evidence presented by the small entity requesting penalty-reduction, such as sworn financial statements, to determine whether reduction is warranted in a particular case. The small entity must demonstrate to the Commission's satisfaction that it presently is unable financially to pay the penalty, in whole or in part, and that it will be unable to pay the penalty, in whole or in part, over a reasonable period of time.

II. Regulatory Requirements

The Commission is announcing a Penalty Reduction Policy as required by SBREFA. As a general statement of policy, the Administrative Procedure Act (''APA'') does not require that the Commission publish the Policy for notice and comment.[27] The Commission wishes, however, to provide interested parties, particularly small entities, an opportunity to comment on the Policy. The Commission intends to revisit the Policy when a reasonable period has passed after the end of the comment period. In its re-evaluation, the Commission will consider its experience administering the Policy and comments the Commission receives.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure.

Text of Amendment

In accordance with the foregoing, 17 CFR, Chapter II, is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for Part 202 is amended by adding the following citation to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

Section 202.9 is also issued under section 223, 110 Stat. 859 (Mar. 29, 1996).

2. Section 202.9 is added to read as follows:

§ 202.9 Small entity enforcement penalty reduction policy.

The Commission's policy with respect to whether to reduce or assess civil money penalties against a small entity is:

(a) The Commission will consider on a case-by-case basis whether to reduce or not assess civil money penalties against a small entity. In determining whether to reduce or not assess penalties against a specific small entity, the following considerations will apply:

(1) Except as provided in paragraph (a)(3) of this section, penalty reduction will not be available for any small entity if:

(i) The small entity was subject previously to an enforcement action;

(ii) Any of the small entity's violations involved willful or criminal conduct; or

(iii) The small entity did not make a good faith effort to comply with the law.

(2) In considering whether the Commission will reduce or refrain from assessing a civil money penalty, the Commission may consider:

(i) The egregiousness of the violations;

(ii) The isolated or repeated nature of the violations;

(iii) The violator's state of mind when committing the violations;

(iv) The violator's history (if any) of legal or regulatory violations;

(v) The extent to which the violator cooperated during the investigation;

(vi) Whether the violator has engaged in subsequent remedial efforts to mitigate the effects of the violation and to prevent future violations;

(vii) The degree to which a penalty will deter the violator or others from committing future violations; and

(viii) Any other relevant fact.

(3) The Commission also may consider whether to reduce or not assess a civil money penalty against a small entity, including a small entity otherwise excluded from this policy under paragraphs (a)(1) (i)–(iii) of this section, if the small entity can demonstrate to the Commission's satisfaction that it is financially unable to pay the penalty, immediately or over a reasonable period of time, in whole or in part.

(4) For purposes of this policy, an entity qualifies as ''small'' if it is a small

[24] *See supra* n.19 and accompanying text.

[25] *See* SBREFA § 223(a).

[26] In accordance with section 21B(d) of the Exchange Act, for example, the staff considers an entity's ''ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.''

[27] 5 U.S.C. § 553(a)(3)(A).

business or small organization as defined by Commission rules adopted for the purpose of compliance with the Regulatory Flexibility Act.[1] An entity not included in these definitions will be considered ''small'' for purposes of this policy if it meets the total asset amount that applies to issuers as set forth in § 230.157a of this chapter.[2]

(b) This policy does not create a right or remedy for any person. This policy shall not apply to any remedy that may be sought by the Commission other than civil money penalties, whether or not such other remedy may be characterized as penal or remedial.

Dated: March 27, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–8360 Filed 4–3–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Mobile, AL 97–005]

RIN 2115–AA97

Safety Zone Regulations: Pelican Passage Dauphin Island, AL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone for Pelican Passage extending ½ mile south and ¾ mile east and west of Dauphin Island Pier, Dauphin Island, Alabama.

The zone is needed to protect personnel and property associated with the Dauphin Island Spring Festival Acrobatic airshow, Dauphin Island, Alabama. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective from 3 p.m. to 4 p.m. on April 5, 1997.

FOR FURTHER INFORMATION CONTACT: LTJG H. Elena McCullough, (334) 441–5286, 150 North Royal Street, Mobile, AL 36652–2924.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessels involved.

Background and Purpose

The event requiring this regulation will begin at 3 p.m. on April 5, 1997. The Town of Dauphin Island will be sponsoring an airshow, with low level acrobatics, in the Pelican Passage extending ½ mile south and ¾ mile east and west of Dauphin Island Pier, Dauphin Island, Alabama, bounded by the previously listed coordinates. The airshow will terminate at 4 p.m. on April 5, 1997. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165. The safety zone in bounded by 30–15N, 088–08.2W; 30–14N, 088–08.2W; 30–13.5N, 088–06.5N; and 30–14.5N, 088–06.5W.

Regulatory Evaluation

This temporary rule is not a significant regulatory evaluation under Executive Order 12866 and is not significant under the ''Department of Transportation Regulatory Policies and Procedures'' (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available by contacting Commander (mps), Eight Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396.

List of Subjects in 33 CFR Part 165

Marine safety, Waterways.

Regulation

For the reasons set out in the preamble, 33 CFR 165 is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.T08–009 is added to read as follows:

§ 165.T08.009 Safety Zone: Pelican Passage, Dauphin Island, AL.

(a) Location. The following area is a safety zone: Pelican Passage extending ½ mile south and ¾ mile east and west of Dauphin Island Pier, Dauphin Island, Alabama. The zone is needed to protect personnel and property associated with the Town of Dauphin Island will be sponsoring an airshow, with low level acrobatics.

(b) Effective date: This section is effective from 3 p.m. to 4 p.m. on April 5, 1997, unless terminated sooner by the Captain of the Port.

(c) Regulations: In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: March 14, 1997.

S.E. Hartley,

Commander, U.S. Coast Guard, Captain of the Port, Acting.

[FR Doc. 97–8504 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–14–M

[1] Pursuant to the Reg. Flex. Act, 5 U.S.C. § 601(3), the Commission has adopted appropriate definitions of ''small business'' for purposes of the Reg. Flex. Act. *See* 17 CFR 270.0–10, 275.0–7, 240.0–10, 230.157, 250.110, and 260.0–7. The Commission recently proposed amendments to certain of these definitions. *Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933,* Securities Act Rel. No. 7383, 62 FR 4106 (Jan. 28, 1997). The Commission extended the comment period for the proposed amendments to April 30, 1997, 62 FR 13356 (Mar. 20, 1997). Based on an analysis of the language and legislative history of the Reg. Flex. Act, Congress does not appear to have intended that Act to apply to natural persons (as opposed to individual proprietorships) or to foreign entities. The Commission understands that staff at the Small Business Administration have taken the same position.

[2] At present, this threshold is $5 million. Thus, non-regulated entities, such as general partnerships, privately held corporations or professional service organizations, with assets of $5 million or less may qualify for penalty-reduction.

33 CFR Part 165

[CCGD08–97–008]

RIN 2115–AE84

Amendment to Regulated Navigation Area Regulations; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: On March 18, 1997 (62 FR14637, March 27, 1997), the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. On March 21, 1997 (62 FR15398, April 1, 1997), the Coast Guard amended the temporary regulated navigation area by extending the southern limit of the regulated navigation area to the boundary of the territorial sea at the approaches to Southwest Pass and included operating requirements affecting the operation of self-propelled vessels of 1600 gross tons or greater. Increasing high water conditions are causing the Coast Guard to amend for a second time the regulation to establish additional safety measures applicable to U.S. flagged and foreign-flagged vessels authorized to carry cargoes listed under Title 46, Code of Federal Regulations, part 151 (chemical barges) and parts 153–154 (chemical and gas ships). The Coast Guard is also extending the effective date of the regulation to April 10, 1997, because the high water conditions are expected to last longer than originally contemplated. The regulated navigation area is needed to protect vessels, bridges, shore-side facilities and the public from a safety hazard created by high water and resulting flooding along the Lower Mississippi River. Downbound barge traffic, and the transmitting of self-propelled vessels of 1600 or more gross tons and chemical and gas ships are prohibited from entering this area unless they are in compliance with this regulation.

EFFECTIVE DATES: This amended regulation is effective at 12:00 p.m. on March 29, 1997 and terminates at 12 p.m. on April 10, 1997.

FOR FURTHER INFORMATION CONTACT: CDR Harvey R. Dexter, Marine Safety Division, USCG Eighth District at New Orleans, LA (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The velocity of river currents on the Lower Mississippi River is approaching an all time high. Several recent vessel allisions with bridges, one of which involved a chemical barge, and barge breakaways, including one involving 134 barges from two barge fleeting facilities, have been caused by strong currents and eddies resulting from flood conditions on the Lower Mississippi River. The Commander, Eighth Coast Guard District has already placed operating restrictions on tows downbound on the Mississippi River to assure adequate safe power for navigation, and additional operating requirements on self-propelled vessels of 1600 or more gross tons operating anywhere within the Regulated Navigation Area (RNA). The district commander is now establishing requirements for fleeting operations in which chemical barges are maintained. In addition, these new regulations will establish requirements for both upbound and downbound tows containing chemical barges, and for downbound chemical or gas ships operating on the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 78 above Head of Passes. Downbound chemical or gas ships will be limited to daylight transit only. This amended emergency Temporary Regulated Navigation Area extends from one mile above the Interstate 20 Highway Bridge at Vicksburg, Mississippi (Lower Mississippi River Mile 437), to the boundary of the territorial sea at the approaches to Southwest Pass.

For purposes of this amended regulation, ''chemical barges'' are defined as barges authorized to carry cargoes listed under Title 46, Code of Federal Regulations § 151 (Subchapter O); ''chemical ships'' are defined as U.S. flagged or foreign-flagged vessels subject to the requirements of Title 46, Code of Federal Regulations, part 153 (Subchapter O); and ''gas ships'' are defined as U.S. flagged or foreign-flagged vessels subject to the requirements of Title 46, Code of Federal Regulations, part 154 (Subchapter O).

This amended regulation requires that chemical barges maintained in a fleeting area be placed in a protected position within the fleet.

Whenever possible, shifting of chemical barges within a fleeting area shall be limited to daylight hours.

Upbound and downbound tows containing chemical barges shall place them in the most protected position within the tow configuration.

Downbound chemical or gas ships operating on the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 78 above Head of Passes shall only transit during daylight hours.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of notice of proposed rulemaking and delay of effective date would be contrary to public interest because immediate action is necessary to ensure self-propelled vessels are capable of operating safely in the increased currents present on the river and prevent downbound towing vessels from alliding with bridges and shore-side structures, and colliding with other vessels, causing danger to the public.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

For the reasons expressed below (Small Entities), the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Small entities in this case would not include a significant number of companies operating chemical or gas ships due to the nature and cost of operating vessels of this size. However, it could include small towing companies that may be affected by this rule. This amendment requires towing operations to place chemical barges in the most protected position within the tow configuration. This is not a constraint on operation since it does not limit the type or kind of barges within a tow, but merely requires prudence when configuring a tow. No additional restrictions on

transit for towing operations are imposed by this amendment. This regulation may also affect fleet operators by requiring that chemical barges be moored in a protected position within the fleet. The regulation also requires that, if chemical barges are to be shifted in a fleeting area, when possible they be shifted during the day. These requirements are consistent with accepted industry practice, impose minimal financial burdens, and are consistent with the actions of prudent operators under the circumstances. This rule is deemed to not have a substantial economic impact.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.(g)(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, and Waterways.

Temporary Regulations

For the reasons set out in the preamble the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMEMDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 46 CFR 1.46.

2. In Section 165.T08–001 paragraph (b)(8) is revised; paragraphs (b)(9), (b)(10), (b)(11), (b)(12), (b)(13), (b)(14), and (b)(15) are added; and paragraph (c) is revised to read as follows:

§ 165.T08–001 Regulated Navigation Area; Lower Mississippi River.

* * * * *

(b) * * *

(8) For purposes of this section, ''chemical barges'' are defined as barges authorized to carry cargoes listed under 46 CFR part 151 (Subchapter O).

(9) Chemical barges maintained in a fleeting area shall be placed in a protected position within the fleet.

(10) Whenever possible, shifting of chemical barges within a fleeting area shall be limited to daylight hours.

(11) Upbound and downbound tows containing chemical barges shall place them in the most protected position within the tow configuration.

(12) For purposes of this section, ''chemical ships'' are defined as U.S. flagged or foreign-flagged vessels subject to the requirements of 46 CFR part 153 (Subchapter O).

(13) For purposes of this section, ''gas ships'' are defined as U.S. flagged or foreign-flagged vessels subject to the requirements of 46 CFR part 154 (Subchapter O).

(14) Downbound chemical or gas ships operating on the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 78 above Head of Passes shall only transit during daylight hours.

(15) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates.* This section is effective at 12:00 p.m. on March 29, 1997 and terminates at 12 p.m. on April 10, 1997.

Dated: March 28, 1997.

Timothy W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–8777 Filed 4–2–97; 2:44 pm]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5807–3]

Regulations of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the Phoenix, Arizona Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA shall require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. On February 18, 1997, EPA issued a direct final rule (62 FR 7164) setting an effective date for the Phoenix ozone nonattainment area to be a covered area in the federal reformulated gasoline (RFG) program. In this action EPA is withdrawing the direct final rule because subsequent to publication, EPA received several requests for a hearing.

DATES: This action will be effective March 31, 1997.

ADDRESSES: Materials relevant to the direct final rule have been placed in Docket A–97–02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall.

Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material. An identical docket is also located in EPA's Region IX office in Docket A–AZ–97. The docket is located at 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00–4:00 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Janice Raburn at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

SUPPLEMENTARY INFORMATION: The preamble, regulatory language and regulatory support document are also available electronically from the EPA internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. The official **Federal Register** version is made available on the day of publication on the primary internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

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Regulated entities. Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business would have been regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated (''conventional gasoline'') in the nine worst ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline (RFG) program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989.[1] Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the RFG program. EPA published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Any other ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against selling conventional gasoline in any area requested by the Governor which has been classified under subpart 2 of Part D of Title I of the act as a Marginal, Moderate, Serious or Severe ozone nonattainment area. Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the Administrator ''deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later.'' In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is ''insufficient domestic capacity to produce'' RFG. Finally, EPA is to publish a governor's application in the **Federal Register**.

[1] Applying these criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee.

By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal RFG program. The Governor requested an implementation date of June 1, 1997. The direct final rule published by EPA on February 18, 1997 (62 FR 7164) extended the RFG program to the Phoenix moderate ozone nonattainment area by setting two implementation dates. EPA set an effective date of June 1, 1997 for refiners, importers, and distributors, and July 1, 1997 for retailers and wholesale purchaser-consumers.

Also on February 18, 1997 EPA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) (62 FR 7197), in which EPA proposed to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona nonattainment area. The Agency published both a proposed rulemaking and a direct final rule because it viewed setting the effective date for the addition of the Phoenix ozone nonattainment area to the federal RFG program as non-controversial and anticipated no adverse or critical comments.

II. Withdrawal of the Phoenix, Arizona Opt-In Direct Final Rule

After publication of the direct final rule and the proposed rule in the **Federal Register**, EPA received several requests for a hearing. A copy of these comments can be found in Air Docket A–97–02. (See **ADDRESSES**) Since EPA received a request for a hearing, as stipulated in the direct final rule, the final rule adding the Phoenix ozone nonattainment area to the RFG program is being withdrawn by today's action effective immediately. Today's withdrawal affects the amendment of section 80.70, paragraph (m) appearing at 62 FR 7167 (February 18, 1997), which would have become effective April 4, 1997, had no adverse or critical comments been received.

EPA is withdrawing this revision to the regulations without providing prior notice and an opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Today's withdrawal must be effective before the date on which the direct final rule would have been effective, April 4, 1997. This would not be possible were EPA to provide an opportunity for public comment on this withdrawal. For the same reasons, EPA finds it has good cause under 5 U.S.C. 533(d) to make this withdrawal immediately effective.

III. Statutory Authority

The Statutory authority for the action proposed today is granted to EPA by sections 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545 (c) and (k) and 7601.

IV. Environmental Impact

The federal RFG program provides reductions in ozone-forming VOC emissions, oxides of nitrogen (NO^x), and air toxics. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

The Arizona Governor's Task Force estimated that if federal RFG were required to be sold in Phoenix, VOC emissions would be cut by more than nine tons/day. In addition, all vehicles would have improved emissions and the area would also get reductions in toxic emissions. Today's action means that the Governor of Arizona's request to include the Phoenix ozone nonattainment area in the federal RFG program will not be effective beginning June 1, 1997. Thus, the Phoenix nonattainment area will forego the air quality benefits that would have resulted from a June 1, 1997 implementation date of the RFG program.

V. Regulatory Flexibility

In the direct final rule, EPA explained why it had determined that it was not necessary to prepare a regulatory flexibility analysis in connection with that action. EPA also determined that the direct final rule would not have a significant economic impact on a substantial number of small entities. Today's action withdraws the direct final rule, an action that would have revised federal regulations. Thus, it was not necessary to prepare a regulatory flexibility analysis. Likewise, the withdrawal will not have a significant economic impact on a substantial number of small entities, because it does not alter any currently existing federal requirements.

VI. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's action does not trigger the requirements of UMRA. The action does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, and Motor vehicle pollution.

Dated: March 31, 1997.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

§ 80.70 [Amended]

2. In § 80.70, paragraph (m) is removed.

[FR Doc. 97–8670 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7662]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date,

[2] *See* 58 FR 51735 (October 4, 1993).

[3] *Id.* at section 3(f)(1)–(4).

contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Executive Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York:				
Baxter Estates, village of, Nassau County	360459	July 15, 1975, Emerg; May 16, 1983, Reg; Apr. 2, 1997, Susp.	Apr. 2, 1997	Apr. 2, 1997.
Bayville, village of, Nassau County	360988	Oct. 25, 1974, Emerg; Sept. 15, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Cedarhurst, village of, Nassau County	360460	Aug. 14, 1974, Emerg; Sept. 1, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Centre Island, village of, Nassau County	360461	Aug. 19, 1975, Emerg; Oct. 18, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Cove Neck, village of, Nassau County	360462	June 11, 1975, Emerg; July 18, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
East Rockaway, village of, Nassau County.	360463	Feb. 16, 1973, Emerg; Dec. 1, 1978, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Freeport, village of, Nassau County	360464	Nov. 26, 1971, Emerg; Feb. 14, 1976, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Glen Cove, city of, Nassau County	360465	Aug. 16, 1974, Emerg; March 1, 1978, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Great Neck, village of, Nassau County	361519	Dec. 18, 1974, Emerg; Nov. 17, 1982, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Great Neck Estates, village of, Nassau County.	360466	May 20, 1975, Emerg; June 15, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Hempstead, town of, Nassau County	360467	Sept. 10, 1971, Emerg; Apr. 16, 1979, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Hewlett Bay Park, village of, Nassau County.	360468	Nov. 25, 1974, Emerg; Jan. 19, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Hewlett Harbor, village of, Nassau County.	360469	Nov. 2, 1973, Emerg; June 15, 1979, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Hewlett Neck, village of, Nassau County	360470	Dec. 10, 1974, Emerg; Jan. 19, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Island Park, village of, Nassau County	360471	Nov. 26, 1971, Emerg; Feb. 14, 1976, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Kensington, village of, Nassau County	360472	July 15, 1975, Emerg; Jan. 19, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Kings Point, village of, Nassau County	360473	Nov. 13, 1974, Emerg; July 5, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Lattingtown, village of, Nassau County	360474	Nov. 20, 1974, Emerg.; Sept. 1, 1978, Reg.; Apr. 2, 1997, Susp.	.....do	Do.
Laurel Hollow, village of, Nassau County	360475	May 8, 1975, Emerg.; Jan. 6, 1983, Reg.; Apr. 2, 1997, Susp.	.....do	Do.
Lawrence, village of, Nassau County	360476	June 27, 1975, Emerg.; May 16, 1983, Reg.; Apr. 2, 1997, Susp.	.....do	Do.
Long Beach, city of, Nassau County	365338	Mar. 5, 1971, Emerg.; June 30, 1972, Reg.; Apr. 2, 1997, Susp.	.....do	Do.
Manorhaven, village of, Nassau County ..	360479	Dec. 26, 1974, Emerg.; June 1, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Mill Neck, village of, Nassau County	360481	June 19, 1975, Emerg.; Oct. 18, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
North Hempstead, village of, Nassau County.	360482	Dec. 17, 1971 Emerg.; Apr. 15, 1977, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Oyster Bay, village of, Nassau County	360483	Sept. 5, 1973, Emerg.; Aug. 1, 1978, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Oyster Bay Cove, village of, Nassau County.	361486	May 13, 1975, Emerg.; Sept. 30, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Plandome Manor, village of, Nassau County.	360486	July 7, 1975, Emerg.; June 15, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Port Washington North, village of, Nassau County.	361562	Dec. 4, 1974, Emerg.; July 5, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Rockville Centre, village of, Nassau County.	360488	May 31, 1974, Emerg.; Nov. 17, 1982, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Roslyn, village of, Nassau County	360489	July 5, 1974, Emerg.; Jan. 5, 1984, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Roslyn Harbor, village of, Nassau County	361035	June 23, 1976, Emerg.; Dec. 15, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Russell Gardens, village of, Nassau County.	361583	Apr. 22, 1976, Emerg.; Nov. 17, 1982, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Saddle Rock, village of, Nassau County ..	360491	July 17, 1975, Emerg.; Oct. 18, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Sands Point, village of, Nassau County ...	360492	Dec. 18, 1974, Emerg.; June 15, 1983, Reg.; Apr. 2, 1997, Susp..	.....do	Do.
Sea Cliff, village of, Nassau County	360493	Sept. 17, 1973, Emerg; Feb. 1, 1978, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Valley Stream, village of, Nassau County	360495	July 22, 1975, Emerg; Jan. 5, 1984, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Woodsburgh, village of, Nassau County ..	360496	Jan. 14, 1975, Emerg; June 1, 1983, Reg; Apr. 2, 1997, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI				
Texas:				
Aubrey, town of, Denton County	480776	Aug. 7, 1996, Emerg; Apr. 2, 1997, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Copper Canyon, town of, Denton County	481508	July 8, 1985, Emerg; Sept. 18, 1987, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Corinth, town of, Denton County	481143	Mar. 5, 1975, Emerg; May 15, 1979, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Cross Roads, town of, Denton County	481513	Jan. 6, 1988, Reg; Apr. 2, 1997, Susp	.....do	Do.
Denton, city of, Denton County	480194	Feb. 18, 1972, Emerg; Aug. 1, 1979, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Denton County, unincorporated areas	480774	July 22, 1975, Emerg; May 4, 1987, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Double Oak, town of, Denton County	481516	May 28, 1982, Emerg; Mar. 4, 1987, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Flower Mound, town of, Denton County	480777	July 31, 1975, Emerg; Sept. 18, 1986, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Hickory Creek, town of, Denton County	481150	July 3, 1990, Emerg; Mar. 1, 1991, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Highland Village, city of, Denton County	481105	June 16, 1978, Emerg; July 16, 1987, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Lake Dallas, city of, Denton County	480780	Apr. 7, 1976, Emerg; Aug. 5, 1986, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Lewisville, city of, Denton County	480195	Jan. 20, 1975, Emerg; Oct. 18, 1988, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Little Elm, town of, Denton County	481152	May 13, 1991, Reg; Apr. 2, 1997, Susp	.....do	Do.
Northlake, town of, Denton County	480782	Apr. 16, 1990, Emerg; Sept. 30, 1994, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Roanoke, city of, Denton County	480785	Mar. 14, 1991, Emerg; Apr. 2, 1997, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Shady Shores, town of, Denton County	481135	Apr. 16, 1979, Emerg; May 11, 1982, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Trophy Club, town of, Denton County	481606	June 12, 1987, Reg; Apr. 2, 1997, Susp	.....do	Do.
Region VIII				
Colorado: Westminster, city of, Jefferson and Adams Counties.	080008	July 13, 1973, Emerg; Sept. 30, 1988, Reg; Apr. 2, 1997, Susp.	.....do	Do.
Region II				
New York: Weedsport, village of, Cayuga County.	360132	June 7, 1974, Emerg; Apr. 1, 1982, Reg; Apr. 16, 1997, Susp.	Apr. 16, 1997 ...	Apr. 16, 1997.
Region V				
Illinois:				
Seneca, village of, Lasalle and Grundy Counties.	170407	May 9, 1975, Emerg; Feb. 1, 1985, Reg; Apr. 16, 1997, Susp.	.....do	Do.
Sun River Terrace, village of, Kankakee County.	171015	Oct. 26, 1984, Emerg; June 19, 1985, Reg; Apr. 16, 1997, Susp.	.....do	Do.

Code for reading third column: Emerg.;—Emergency; Reg.;—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: March 26, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–8662 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–05–P

44 CFR Part 65

[Docket No. FEMA–7213]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification.

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois:					
DuPage and Cook	Village of Burr Ridge ...	Feb. 7, 1997, Feb. 14, 1997, *The Doings*.	Mr. Emil J. Coglianese, Jr., President of the Village of Burr Ridge, 7660 South County Line Road, Burr Ridge, Illinois 60521.	May 15, 1997	170071C
DuPage	Village of Carol Stream	Jan. 9, 1997, Jan. 16, 1997, *Daily Herald*.	Mr. Ross Ferraro, President of the Village of Carol Stream, 500 North Gary Avenue, Carol Stream, Illinois 60188.	Jan. 2, 1997	170202C
Cook	City of Prospect Heights.	Feb. 7, 1997, Feb. 14, 1997, *Daily Hearld*.	The Honorable Edward P. Rotchford, Mayor of the City of Prospect Heights, 1 North Elmhurst Road, Prospect Heights, Illinois 60070.	Jan. 30, 1997	170919B
DuPage	Unincorpated Areas	Jan. 9, 1997, Jan. 16, 1997, *Daily Herald*.	Mr. Gayle M. Franzen, Chairman of the DuPage County Board of Commissioners, 421 North County Farm Road, Wheaton, Illinois 60187.	Jan. 2, 1997	170197C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Virginia: Arlington	Unincorporated Areas	Feb. 7, 1997, Feb. 14, 1997, *Arlington Journal*.	Ms. Ellen M. Bosman, Chairman of the Arlington County Board of Commissioners, 2100 Clarendon Boulevard, Suite 300, Arlington, Virginia 22201.	May 15, 1997	515520B
Michigan: Kalamazoo ..	City of Kalamazoo	Jan. 24, 1997, Jan. 31, 1997, *Kalamazoo Gazette*.	The Honorable Barbara Larson, Mayor of the City of Kalamazoo, 241 West South Street, Kalamazoo, Michigan 49007.	Jan. 17, 1997	260315C
North Carolina: Wayne	City of Goldsboro	Jan. 20, 1997, Jan. 27, 1997, *Goldsboro News-Argus*.	Mr. Richard M. Slozak, Goldsboro City Manager, 214 North Center Street, Goldsboro, North Carolina 27533.	Apr. 27, 1997	370255B
Ohio:					
Lorain	City of Avon	Feb. 4, 1997, Feb. 11, 1997, *The Morning Journal*.	The Honorable James A. Smith, Mayor of the City of Avon, 36774 Detroit Road, Avon, Ohio 44011–1588.	Jan. 27, 1997	390348C
Allen	Unincorporated Areas	Jan. 27, 1997, Feb. 3, 1997, *Lima News*.	Ms. Alberta Lee, President, Board of Commissioners, 301 North Main Street, P.O. Box 1243, Lima, Ohio 45802.	Jan. 21, 1997	390758B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 27, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–8660 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC, 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because

final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Okaloosa County (unincorporated areas) (FEMA Docket No. 7190)	
Gulf of Mexico:	
Approximately 800 feet south of intersection of Amberjack Drive and Santa Rosa Boulevard	*10
Approximately 1,000 feet southwest of intersection of Interstate Route 98 and Calhoun Avenue	*12
Approximately 600 feet south of intersection of Amberjack Drive and Santa Rosa Boulevard	*10
Approximately 1,600 feet east of the end of Wasque Road in the vicinity of Wasque Point	*13
At the intersection of Dyke Road and the western-most Jeep Trail	*10
Maps available for inspection at the Edgartown Town Hall, 70 Main Street, 3rd Floor, Edgartown, Massachusetts.	
NEW YORK	
Brutus (town), Cayuga County (FEMA Docket No. 7195)	
Skaneateles Creek:	
Approximately 560 feet downstream of Farm Bridge	*383
Approximately 1,370 feet upstream of Farm Bridge	*387
Cold Spring Brook:	
Approximately 50 feet upstream of River Forest Drive	*384
At the confluence with Old Erie Canal	*396
North Brook:	
At the Old Erie Canal	*396
Approximately 20 feet upstream of the Old Erie Canal	*396
Maps available for inspection at the Brutus Town Clerk's Office, 9021 North Seneca Street, Weedsport, New York.	
Gardiner (town), Ulster County (FEMA Docket No. 7195)	
Mara Kill:	
At County Road No. 7	*239
Approximately 1,140 feet upstream of Sparkling Ridge Road	*539
Maps available for inspection at the Gardiner Town Hall, 95 Main Street, Gardiner, New York.	
OHIO	
Canal Winchester (village), Franklin County (FEMA Docket No. 7195)	
Tussing-Bachman-Bush Ditch:	
Just downstream of County Route 7 (Groveport Road)	*741
At upstream county boundary	*769
Maps available for inspection at the Canal Winchester Village Hall, 10 North High Street, Canal Winchester, Ohio.	
Franklin County (unincorporated Areas) (FEMA Docket No. 7195)	
Georges Creek Overland Flow:	
Maps available for inspection at the Okaloosa County Planning and Inspection Department, 1804 Lewis Turner Boulevard, Suite 200, Fort Walton Beach, Florida.	
GEORGIA	
Colquitt County (unincorporated areas) (FEMA Docket No. 7190)	
Okapilco Creek:	
Old Berlin Road (approximately 32.5 miles above mouth)	*231
Approximately 150 feet downstream of State Route 35	*281
Maps available for inspection at the Colquitt County Commissioner's Office, 1220 South Main, Moultrie, Georgia.	
Moultrie (city), Colquitt County (FEMA Docket No. 7190)	
Okapilco Creek:	
Approximately 37.8 miles above mouth	*261
Approximately 41.2 miles above mouth	*280
Channel F:	
Upstream side of NE 9th Street	*273
Approximately 130 feet downstream of NE 7th Street	*273
Ochlockonee River:	
Approximately 0.65 mile upstream of Meigs Road bridge	*249
Approximately 1.06 miles upstream of Meigs Road bridge	*250
Channel D:	
Corporate limits (approximately 0.15 mile upstream of the confluence with Ochlockonee River)	*249
Approximately 0.26 mile upstream of the confluence with Ochlockonee River	*249
Maps available for inspection at the City of Moultrie Engineering Department, 1108 1st Street, N.E., Moultrie, Georgia.	
MASSACHUSETTS	
Edgartown (town), Dukes County (FEMA Docket No. 7164)	
Atlantic Ocean:	
Approximately 620 feet south of the intersection of Herring Creek Road and Atlantic Drive	*10
Approximately 2,000 feet south of the end of Pohoganot Road where it intersects with an Access Road	*9
Nantucket Sound:	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Georges Creek	*747
Approximately 2,080 feet upstream of confluence with Georges Creek	*751
Maps available for inspection at the Franklin County Zoning Department, 373 South High Street, 15th Floor, Columbus, Ohio.	
PENNSYLVANIA	
Allegheny (township), Westmoreland County (FEMA Docket No. 7110)	
Pine Run (Lower Reach):	
Just upstream of CONRAIL	*789
Approximately 600 feet upstream of State Route 56 (Bypass)	*815
Maps available for inspection at the Allegheny Community Building, 136 Community Building Road, Leechburg, Pennsylvania.	
Delmont (borough), Westmoreland County (FEMA Docket No. 7112)	
Turtle Creek (Upper Reach):	
Approximately 400 feet downstream of the most upstream crossing of Old William Penn Highway	*1,054
Approximately 350 feet upstream of the most upstream crossing of Old William Penn Highway	*1,063
Maps available for inspection at the Delmont Borough Office, 77 Greensburg Street, Delmont, Pennsylvania.	
Derry (township) Westmoreland County (FEMA Docket No. 7116)	
Loyalhanna Creek:	
At Borough of Latrobe corporate limits	*970
Approximately 800 feet downstream of confluence of Saxman Run	*970
McGee Run:	
Approximately 660 feet downstream of North Ligonier Street	*1,130
Approximately 540 feet downstream of North Ligonier Street	*1,133
Garlane Mills Run:	
At a point approximately 1,110 feet upstream of West 5th Avenue	*1,291
At a point approximately 1,080 feet upstream of West 5th Avenue	*1,292
Maps available for inspection at the Derry Township Municipal Building, 650 Derry Road, Derry, Pennsylvania.	
East Cocalico (township), Lancaster County (FEMA Docket No. 7190)	
Stony Run:	
Approximately 265 feet upstream of confluence with Cocalico Creek	*369
Approximately 0.6 mile upstream of Denver Road	*423
Maps available for inspection at the East Cocalico Township Hall, 100 Hill Road, Denver, Pennsylvania.	
East Huntingdon (township), Westmoreland County (FEMA Docket No. 7110)	
Belson Run:	
Approximately 400 feet upstream of Sunny Lane	*1,138
Approximately 625 feet upstream of Sunny Lane	*1,139
Maps available for inspection at the East Huntingdon Municipal Building, Route 981, Alverton, Pennsylvania.	
Hempfield (township), Westmoreland County (FEMA Docket No. 7175)	
Sewickley Creek:	
Approximately 0.5 mile downstream of confluence with Buffalo Run	*930
Approximately 1,000 feet downstream of confluence with Buffalo Run	*932
Brush Creek:	
Approximately 100 feet downstream of CONRAIL	*958
Approximately 300 feet upstream of State Route 766	*1,071
Down Run:	
At upstream side of Lewis Avenue	*1,010
Approximately 240 feet upstream of Lewis Avenue	*1,016
Maps available for inspection at the Hempfield Municipal Building, Woodward Drive, Greensburg, Pennsylvania.	
Monessen (city), Westmoreland County (FEMA Docket No. 7112)	
Monongahela River:	
Approximately 0.5 mile upstream of the Donora-Monessen bridge	*760
Approximately 1,025 feet upstream of North Charleroi bridge	*762
Maps available for inspection at the City Hall, 100 Third Street, Monessen, Pennsylvania.	
New Stanton (borough), Westmoreland County (FEMA Docket No. 7110)	
Belson Run:	
At downstream corporate limits with Hempfield	*1,043
At upstream corporate limits with Hempfield (near Sandworks Road)	*1,133
Maps available for inspection at the Borough Municipal Building, 451 West Center Avenue, New Stanton, Pennsylvania.	
North Huntingdon (township), Westmoreland County (FEMA Docket No. 7110)	
Brush Creek:	
Just upstream of confluence of Bushy Run	*917
Upstream side of second crossing of CONRAIL	*929
Maps available for inspection at the North Huntingdon Township Hall, 11279 Center Highway, North Huntingdon, Pennsylvania.	
Penn (township), Westmoreland County (FEMA Docket No. 7110)	
Lyons Run:	
At Pleasant Valley Road (L.R. 64089)	*915
Approximately 1.1 miles upstream of Pleasant Valley Road	*981
Brush Creek:	
Upstream side of most upstream crossing of State Route 766	*1,100
Approximately 125 feet upstream of the most upstream crossing of State Route 766	*1,101
Maps available for inspection at the Township Building, Municipal Court, Harrison City, Pennsylvania.	
Rostraver (township), Westmoreland County (FEMA Docket No. 7175)	
Speers Run:	
Approximately 0.2 mile downstream of State Route 200	*811
At confluence of Speers Run Tributary 2 and 3	*903

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Speers Run Tributary 2:	
At confluence with Speers Run	*903
At downstream side of upstream Norfolk and Western Railway culvert	*990
Speers Run Tributary 3:	
At confluence with Speers Run	*903
Approximately 0.3 mile upstream of Norfolk and Western Railway	*932
Speers Run Tributary 4:	
At confluence with Speers Run	*844
Approximately 40 feet downstream of Norfolk and Western Railway	*863
Monongahela River:	
At county boundary	*757
At upstream side of Interstate Route 70	*764
Youghiogheny River:	
At the downstream corporate limits (in the area of Collinsburg Road)	*769
Maps available for inspection at the Rostraver Township Municipal Building, R.D. #4, Port Royal Road, Belle Vernon, Pennsylvania.	
Salem (township), Westmoreland County (FEMA Docket No. 7110)	
Crab Tree Creek:	
Approximately 0.3 mile downstream of U.S. Route 119	*990
Approximately 130 feet upstream of L.R. 64054	*1,037
Maps available for inspection at the Township Municipal Building, Congruity Road, Greensburg, Pennsylvania.	
Sewickley (township), Westmoreland County (FEMA Docket No. 7110)	
Youghiogheny River Tributary:	
At the corporate limits with Borough of Sutersville	*864
Approximately 100 feet downstream of corporate limits with Borough of Sutersville	*860
Maps available for inspection at the Sewickley Municipal Building, Mars Hill Road, Irwin, Pennsylvania.	
Scottdale (borough), Westmoreland County (FEMA Docket No. 7110)	
Jacob's Creek (Lower Reach):	
Approximately 0.5 mile upstream of 5th Avenue	*1,031
Upstream Borough of Scottdale corporate limits	*1,036
Stauffer Run:	
Confluence with Jacob's Creek (Lower Reach)	*1,036
Approximately 100 feet downstream of Chestnut Street	*1,036
Maps available for inspection at the Scottdale Borough Hall, 10 Mt. Pleasant Road, Scottdale, Pennsylvania.	
Seward (borough), Westmoreland County (FEMA Docket No. 7112)	
Conemaugh River:	
Downstream corporate limits of the Borough of Seward	*1,099
Upstream corporate limits of the Borough of Seward	*1,102
Maps available for inspection at Ms. Rose Bouch's Home, Corner of Washington Street and Hedges Street, Seward, Pennsylvania.	
South Huntington (township), Westmoreland County (FEMA Docket No. 7175)	
Sewickley Creek:	
Approximately 0.5 mile downstream of confluence of Buffalo Run	*930
Approximately 1,000 feet downstream of confluence with Buffalo Run	*932
Maps available for inspection at the South Huntington Township Hall, 75 Supervisor Drive, West Newton, Pennsylvania.	
Tredyffrin (township), Chester County (FEMA Docket No. 7179)	
Little Valley Creek	
On the upstream side of Mill Road	*147
Approximately 1,800 feet upstream of Church Road	*245
Tributary No. 2 of Trout Creek:	
At confluence with Trout Creek	*160
Approximately 100 feet upstream of the confluence with Trout Creek	*160
East Tributary to Crum Creek:	
Approximately 650 feet upstream of Devon Road	*467
Approximately 830 feet upstream of Devon Road	*470
Maps available for inspection at the Tredyffrin Municipal Building, 1100 DuPortail Road, Berwyn, Pennsylvania.	
Unity (township), Westmoreland County (FEMA Docket No. 7112)	
Slate Creek:	
Approximately 1,700 feet upstream of U.S. Route 30	*1,142
Approximately 1,200 feet upstream of U.S. Route 30	*1,142
Maps available for inspection at the Unity Township Municipal Building, R.D. 3, Latrobe, Pennsylvania.	
Washington (township), Westmoreland County (FEMA Docket No. 7110)	
Pucketa Creek:	
Approximately 725 feet downstream of State Route 380	*921
Approximately 0.4 mile upstream of Ashbaug Road	*1,071
Pine Run (Upper Reach):	
Approximately 0.6 mile upstream of Chamber Road (Pine Run Road)	*987
Maps available for inspection at the Washington Township Municipal Building, 285 Pine Run Church Road, Apollo, Pennsylvania.	
WISCONSIN	
West Bend (city), Washington County (FEMA Docket No. 7195)	
Silver Creek:	
Approximately 52 feet downstream of City Park Drive	*899
Downstream side of West Washington Street culvert	*932
Silverbrook Creek:	
Upstream side of Silverbrook Drive	*928
Approximately 900 feet upstream of U.S. Highway 45	*955
Washington Creek:	
Approximately 200 feet downstream of Valley Avenue	*981
Approximately 450 feet upstream of Shepherds Drive	*1,002
Maps available for inspection at the West Bend City Hall, 1115 South Main Street, West Bend, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 27, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–8659 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152; FCC 97–101]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Second Report and Order (Order) released March 25, 1997 clarifies the definition of ''alarm monitoring service'' and the manner in which the Commission will apply the nondiscrimination provisions of section 275(b) of the Telecommunications Act of 1996 (the 1996 Act). This Order implements the alarm monitoring provisions of section 275 of the 1996 Act.

EFFECTIVE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Carey, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted March 21, 1997, and released March 25, 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/fcc97–101.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Regulatory Flexibility 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 regulations 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 regulations 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).

Synopsis of Second 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, de-regulatory 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 alarm monitoring provisions of section 275.

3. Section 275 prohibits Bell Operating Companies (BOCs) from providing alarm monitoring service until February 8, 2001, although it exempts from this prohibition those BOCs that were providing alarm monitoring service as of November 30, 1995. This Order clarifies the definition of ''alarm monitoring service'' and the manner in which we will apply the nondiscrimination provisions of section 275(b). We address the enforcement issues related to sections 260, 274, and 275 in a separate proceeding.

II. Scope of the Commission's Authority

A. Scope of Authority Over Alarm Monitoring Services

i. Background

4. Pursuant to *Computer III*, the Commission has traditionally regulated alarm monitoring services provided by BOCs as enhanced (or information) services. The Commission has determined that ''all of the services that the Commission has previously considered to be 'enhanced services' are 'information services.' '' *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96–149, First Report and Order and Further Notice of Proposed Rulemaking, (62 FR 2927 (January 21, 1997)) at ¶ 102 (*Non-Accounting Safeguards Order*). Accordingly, we use the term ''information services'' to apply to both. These rules applied to all BOC-provided alarm monitoring services—intrastate as well as interstate. Because the Modified Final Judgment (MFJ) prohibition on BOC provision of interLATA telecommunications services also applied to interLATA information services, however, the BOCs were limited to providing alarm monitoring services on an intraLATA basis.

5. Section 275 of the Act refers generally to BOC and incumbent local exchange carrier (LEC) provision of alarm monitoring services and does not differentiate between interLATA and intraLATA or between interstate and intrastate alarm monitoring services. In the *NPRM*, we sought comment on the extent of the Commission's authority over intrastate alarm monitoring services. We also asked whether, if the Commission lacks express authority over intrastate alarm monitoring services, the Commission has authority to preempt state regulation with respect to these matters pursuant to *Louisiana PSC*.

ii. Discussion

6. For the reasons stated below, we find that section 275, and the Commission's authority thereunder, applies to intrastate as well as interstate alarm monitoring services provided by incumbent LECs and their affiliates. We also find that section 2(b) does not limit the Commission's authority to establish rules governing intrastate alarm monitoring service pursuant to section 275. We hold, therefore, that the states may regulate incumbent LEC provision of alarm monitoring services, but may not do so in a manner that is inconsistent with section 275 and the interpretations established in this Order.

7. We find that section 275, by its terms, applies to interstate and intrastate alarm monitoring services. The statute makes no distinction between interstate and intrastate alarm monitoring services, but rather enacts a broad prohibition on all BOC provision of alarm monitoring services, except for ''grandfathered'' BOCs. Significantly, section 275(b) provides that ''an incumbent *local exchange* carrier * * * engaged in the provision of alarm monitoring service shall not subsidize its alarm monitoring services either directly or indirectly *from telephone exchange service operations*.'' Because telephone exchange service is a local, intrastate service, section 275(b) plainly addresses intrastate service. Thus, the safeguards provided in section 275(b) clearly and explicitly relate to intrastate service. Given that section 275(b) applies explicitly to intrastate service, we find that Congress intended that all of section 275 apply to intrastate alarm monitoring service.

8. This interpretation of section 275 also is consistent with existing

Commission regulation of alarm monitoring and other enhanced services. As discussed above, alarm monitoring services provided by BOCs are currently regulated as enhanced services and are subject to *Computer III* nondiscrimination safeguards. These safeguards apply to the intrastate as well as interstate aspects of alarm monitoring services.

9. We also find that adopting the view that section 275, and our authority thereunder, applies only to interstate services would lead to implausible results. If section 275 were interpreted to apply only to interstate alarm monitoring services, the five-year prohibition on BOC entry into alarm monitoring service in section 275(a) would apply only to the extent that a BOC provides alarm monitoring services on an interstate basis. Because the jurisdictional nature of an alarm monitoring service depends on whether the monitoring center is situated in the same state as the monitored premises, a BOC could escape a prohibition on providing interstate alarm monitoring service by establishing a monitoring center in each state in which it sought to do business. We agree with AICC and AT&T that such a reading would render the section 275(a) prohibition against BOC entry into the alarm monitoring business nearly meaningless, a result that in our view is contrary to the plain intent of this section. We further find that limiting the scope of the prohibition to interstate alarm monitoring services would be contrary to the rule of statutory construction ''that one provision should not be interpreted in a way * * * that renders other provisions of the same statute inconsistent or meaningless.''

10. Nevertheless, several parties argue that sections 2(b) of the 1934 Act and 601(c) of the 1996 Act prevent the Commission from exercising authority over intrastate alarm monitoring services. Section 2(b) provides that ''nothing in this Act shall be construed to apply to or give the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service * * *.'' In *Louisiana PSC*, the Supreme Court held that, in order to overcome section 2(b)'s limitation of Commission authority over intrastate service, Congress must either modify section 2(b) or grant the Commission additional authority over intrastate services.

11. As discussed above, we find that Congress, by the Act's use of the term ''telephone exchange service,'' explicitly granted the Commission authority over intrastate alarm monitoring services for the purpose of section 275. Accordingly, consistent with the Court's statement in *Louisiana*, we find that section 2(b) does not limit our authority over intrastate alarm monitoring services. Consistent with our finding in the *Local Competition Order* (61 FR 45476 (August 29, 1996)) and the *Non-Accounting Safeguards Order*, we find that in enacting section 275 after section 2(b) and addressing services that are intrastate in nature, Congress intended the express language of section 275 to take precedence over any limiting language in section 2(b).

12. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate alarm monitoring. 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 shown above, we conclude that section 275 expressly modifies the Commission's existing statutory authority and authorizes adoption of regulations implementing the requirements of section 275 that apply to incumbent LECs' provision of both intrastate and interstate alarm monitoring service.

13. We also find implausible the suggestion that we should interpret section 275 to apply broadly to all alarm monitoring services, but that the Commission's rulemaking authority under that section is limited to interstate services. Rather, we conclude that the Commission's rulemaking authority pursuant to section 275 is coextensive with the reach of the statute. As discussed below, the Commission possesses broad rulemaking authority to implement and interpret provisions of the Communications Act. Nothing in section 275 or elsewhere in the Act deprives the Commission of this authority.

14. We therefore find that section 275 and the Commission's authority thereunder apply to all alarm monitoring services—interstate or intrastate—and affirm our tentative conclusion that section 275 applies to interLATA and intraLATA alarm monitoring services. We further hold that the rules we establish to implement section 275 are binding upon the states and that states may not impose any requirements that are inconsistent with section 275 or the Commission's rules. Because we find that section 275 provides the Commission with direct authority over intrastate alarm monitoring services, we reject the argument of the New York Commission that the Commission lacks authority to preempt inconsistent state rules regarding intrastate alarm monitoring services.

B. Scope of Authority to Issue Rules to Implement Section 275

i. Background

15. Section 275 contains several terms that are subject to varying interpretation. The *NPRM* sought comment on whether several provisions of section 275 should be clarified.

ii. Discussion

16. In the *NPRM*, we identified areas of ambiguity in the requirements of section 275 that may benefit from the adoption of rules that clarify and implement those mandates. We find that Congress enacted in section 275 principles that can best be implemented if we give affected parties more specific guidelines concerning the requirements of that section, which will enable the Commission to carry out effectively and efficiently its enforcement obligations under the Communications Act.

17. We reject the suggestion of the California Commission that we issue nonbinding ''guidelines'' that would be applied by the states if they so choose. Such an approach could result in inconsistent and uncertain application of the requirements of section 275, which may deter or hamper alarm monitoring service providers that wish to offer service on a nationwide basis.

18. Based on the foregoing, we find, pursuant to the general rulemaking authority vested in the Commission by sections 4(i), 201(b), and 303(r) of the Communications Act, and consistent with fundamental principles of administrative law, that the Commission has the requisite authority to promulgate rules implementing section 275 of the Communications Act.

19. It is well-established that the Commission possesses authority to adopt rules to implement the requirements of the Communications Act. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt rules it deems necessary or appropriate in order to carry out its responsibilities under the Communications Act, so long as those rules are not otherwise inconsistent with the Communications Act. 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.

C. Constitutional Issues

20. BellSouth and U S WEST raise constitutional concerns with respect to our implementation of section 275. BellSouth contends that the Commission must be ''circumspect'' in its construction of section 275 because the prohibition on alarm monitoring services ''impose[s an] impermissible prior restraint[] on BOCs' speech activities,'' in violation of the First Amendment. Further, it maintains that section 275, 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 275, BellSouth urges us to construe these sections, and others, narrowly. U S WEST concurs with BellSouth that section 275 is an unlawful bill of attainder and urges the Commission not to adopt any structural rules beyond the express terms of the statute.

21. 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. We find that the prohibition on the provision of alarm monitoring services in section 275 is not a restriction on BellSouth's speech under the First Amendment.

22. Similarly, we reject BellSouth and U S WEST's argument that section 275 is an unconstitutional ''bill of attainder'' because the statute singles out BOCs by name and imposes restrictions on them alone. We conclude that section 275 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. We find no evidence, and BellSouth and U S WEST have offered none, that would support a finding that Congress enacted section 275 to punish the BOCs. Thus, we conclude that the section 275 restrictions imposed on BOCs do not violate the Bill of Attainder Clause.

III. Alarm Monitoring Service Defined

A. Scope of Section 275(e)

i. Background

23. Section 275(e) defines ''alarm monitoring service'' as: A service that uses a device located at a residence, place of business, or other fixed premises—(1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a [LEC] or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat * * *.

The *NPRM* tentatively concluded that the provision of underlying basic tariffed telecommunications services does not fall within the definition of alarm monitoring service under section 275(e). The *NPRM* further tentatively concluded that Ameritech's alarm monitoring service falls within the definition in section 275(e) and is therefore grandfathered under section 275(a)(2). The *NPRM* sought comment on whether any other services provided by incumbent LECs should be considered alarm monitoring services under section 275(e) and grandfathered under section 275(a)(2).

ii. Discussion

24. We find that a service provided by incumbent LECs to transmit information for use in connection with an alarm monitoring service, such as U S WEST's ''ScanAlert'' or ''Versanet,'' does not constitute an alarm monitoring service as defined by the Act. We further find, for the reasons discussed below, that the service provided by Ameritech constitutes an alarm monitoring service, as defined by section 275(e).

25. *Incumbent LEC Services Used to Transmit Alarm Monitoring Information.* We conclude that an incumbent LEC that provides a service used to transmit alarm monitoring information used by a third party to furnish alarm monitoring service is not engaged in the provision of alarm monitoring service under the Act. U S WEST argues that its basic service ''Scan-Alert'' and enhanced ''Versanet'' service qualify as alarm monitoring services under section 275(e) because these services ''use'' a device to receive signals from other devices at the customer's premises and transmit a signal to a remote monitoring center. U S WEST neither operates the monitoring center nor provides the ''devices'' that transmit the alarm signal. Rather, U S WEST only provides the transmission link between the two locations.

26. The definition of alarm monitoring service in section 275(e) does not specify whether the ''device'' that transmits the information or the service provided by the ''remote monitoring center'' that receives the information must be offered by a BOC in order for its service to qualify as an alarm monitoring service. Nor does the legislative history address this issue. We find, however, that a service that only transmits a signal from the monitored premises to the monitoring center, and therefore does not ''use a device * * * to receive signals from other devices located at or about such premises * * *'' cannot qualify as alarm monitoring service regardless of whether it is regulated as a telecommunications service or an information service. Since alarm monitoring service is offered throughout the country by alarm companies that use BOC-provided basic telephone service to provide transmission between the monitored premises and the alarm monitoring center, the statutory interpretation advocated by U S WEST would grandfather all BOCs and, consequently, would make none subject to the prohibition in section 275(a). We reject this interpretation because it would render section 275(a) superfluous. For the same reason, we also reject U S WEST's contention that an information service used to transmit signals used for alarm monitoring, such as its ''Versanet'' service, should be classified as an alarm monitoring service merely because it includes an enhanced component. Whether a particular service qualifies as an enhanced or information service does not necessarily qualify it as an alarm monitoring service. We therefore affirm our tentative conclusion that an incumbent LEC that provides a basic telecommunications service that is used by third parties to offer an alarm monitoring service is not engaged in the provision of an alarm monitoring service. We further find that an incumbent LEC that provides an enhanced service that transmits an alarm signal to a third party is not engaged in the provision of alarm monitoring service. We find that our conclusion will satisfy Congress's intent to impose a five-year restriction on BOC entry into the alarm monitoring services

market and the associated protections to nonaffiliated alarm monitoring providers.

27. We clarify, however, that the prohibition on BOC provision of alarm monitoring services in section 275(a) applies only to alarm monitoring services as defined in section 275(e). Neither U S WEST nor any other BOC is precluded from continuing to provide telecommunications and information services used by unaffiliated firms to provide alarm monitoring service. We also clarify, in accord with BellSouth's request, that ''service offerings such as remote meter reading * * *, remote monitoring of customer premises equipment (CPE) for maintenance and other purposes, or other services in which the purpose of the service offering is not to alert public safety personnel of [a] threat'' do not constitute alarm monitoring services because such services do not fall within the definition of alarm monitoring service in section 275(e). Since section 275(e) defines alarm monitoring service specifically to include transmission of signals ''regarding a possible threat at such premises to life, safety, or property from burglary, fire, vandalism, bodily injury or other injury * * *'' we find that service offerings that do not involve a possible threat, such as those BellSouth mentions, do not fall within the definition in section 275(e).

28. *Ameritech's Service.* Ameritech's ''SecurityLink'' service was described in its 1995 CEI plan as ''the sale, installation, monitoring and maintenance of intrusion and motion detection systems, fire detection systems, and other types of monitoring and control systems, * * * the transmission of a non-voice message from the residential, commercial or governmental alarm system to a central monitoring station * * * [and] a voice call placed by personnel at the monitoring station to the police or fire department and to persons designated to be contacted in the event of an alarm * * *.'' This service fits squarely within the definition of alarm monitoring service in section 275(e). We therefore find that Ameritech's ''SecurityLink'' service falls within the definition of an alarm monitoring service under section 275(e). Since Ameritech is the only BOC that was authorized to provide alarm monitoring service as of November 30, 1995, we find that Ameritech is the only BOC that qualifies for ''grandfathered'' treatment under section 275(a)(2).

B. Meaning of ''Provision'' in Section 275(a)

i. Background

29. Section 275(a)(1) prevents BOCs from ''engag[ing] in the provision'' of alarm monitoring service until February 8, 2001. Section 275(b) places certain nondiscrimination obligations on all incumbent LECs ''engaged in the provision'' of alarm monitoring services. In the *NPRM*, we sought comment on the types of activities that constitute the ''provision'' of alarm monitoring services subject to this section. We asked parties to address, with specificity, the levels and types of involvement in alarm monitoring that would constitute ''engag[ing] in the provision'' of alarm monitoring service. We tentatively concluded that resale of alarm monitoring service constitutes the provision of such service and sought comment on whether, among other things, billing and collection, sales agency, marketing and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. We also asked parties to address any other factors that may be relevant in determining whether an incumbent LEC, including a BOC, is providing alarm monitoring service under section 275.

ii. Discussion

30. We conclude, consistent with our reading of the statutory definition of alarm monitoring service, that an incumbent LEC, including a BOC, is engaged in the ''provision'' of alarm monitoring service if it operates the ''remote monitoring center'' in connection with the provision of alarm monitoring service to end users. As noted above, if an incumbent LEC is merely providing the CPE and/or the underlying transmission service, it is not engaged in the provision of alarm monitoring service under section 275. We further find, consistent with Commission precedent, that the resale of a service constitutes the provision of that service. We therefore affirm our tentative conclusion that the resale of alarm monitoring service constitutes the provision of such service under section 275. We also conclude that BOC performance of the billing and collection for a particular alarm monitoring company does not, in itself, constitute the provision of alarm monitoring service under section 275(a). Indeed, BOCs perform billing and collection for many services that they themselves do not offer and, in some cases, are barred from offering.

31. We find that BOC participation in sales agency, marketing, and/or various compensation arrangements in connection with alarm monitoring services does not necessarily constitute the provision of alarm monitoring under section 275(a). Whereas other provisions of the Act explicitly bar BOCs from engaging in such activities in connection with other services, section 275 does not, by its terms, prohibit a BOC from acting as a sales agent or marketing alarm monitoring service. We therefore reject AICC's suggestion that we should flatly prohibit BOCs from entering into arrangements to act as sales agents on behalf of alarm monitoring service providers or to market on behalf of, or in conjunction with, alarm monitoring service providers.

32. We recognize, however, that there may be certain situations where a BOC is not directly providing alarm monitoring service, but its interests are so intertwined with the interests of an alarm monitoring service provider that the BOC itself may be considered to be ''engag[ed] in the provision'' of alarm monitoring in contravention of section 275(a). We conclude therefore that we will examine sales agency and marketing arrangements between a BOC and an alarm monitoring company on a case-by-case basis to determine whether they constitute the ''provision'' of alarm monitoring service. In evaluating such arrangements, we will take into account a variety of factors including whether the terms and conditions of the sales agency and marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis.

33. In addition, we will also consider how the BOC is being compensated for its services. For example, if a BOC, acting as a sales agent or otherwise marketing the services of a particular alarm monitoring service provider, has a financial stake in the commercial success of that provider, such involvement with the alarm monitoring company may constitute the ''provision'' of alarm monitoring service. Such a BOC may be unlawfully providing alarm monitoring services if its compensation for marketing such services is based on the net revenues of an alarm monitoring service provider to which the BOC furnishes such marketing services. In that circumstance, a BOC's compensation would not be tied to its performance in marketing the unaffiliated firm's service, but rather would depend on the unaffiliated firm's performance in offering alarm monitoring service. We find that this approach to evaluating

sales agency and marketing arrangements will preserve the strength of the five-year restriction on BOC entry into the alarm monitoring services market and the associated protections to nonaffiliated alarm monitoring providers.

34. Some parties have noted that the question of what constitutes ''engag[ing] in the provision'' of alarm monitoring service under section 275(a) is at issue in the context of Southwestern Bell Telephone Company's (SWBT) comparably efficient interconnection (CEI) plan to provide ''security services.'' The lawfulness of SWBT's security services is a fact-specific determination that is outside the scope of this rulemaking. We will not address, therefore, any comments filed in this proceeding that address the merits of SWBT's CEI plan. The SWBT CEI plan proceeding, however, will be resolved consistent with the policies adopted in this Order.

35. Finally, we reject BellSouth's contention that section 275(a)(2) permits non-grandfathered BOCs to engage in the provision of alarm monitoring to the extent that they do not obtain an ''equity interest in'' or ''financial control of'' an alarm monitoring service provider. We find that section 275(a)(2) pertains exclusively to alarm monitoring activities by a grandfathered BOC and, therefore, has no applicability to non-grandfathered BOCs.

IV. Existing Alarm Monitoring Service Providers

A. Background

36. Section 275(a)(1) generally prohibits the BOCs from engaging in the provision of alarm monitoring services until February 8, 2001. Section 275(a)(2) allows BOCs that were providing alarm monitoring services as of November 30, 1995, to continue to do so, but provides that ''[s]uch Bell operating company or affiliate may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity.'' The *NPRM* sought comment on whether regulations are needed to define further the terms of section 275(a)(2) and, in particular, on what is meant by the terms ''equity interest'' and ''financial control.'' It also sought comment on the conditions under which an ''exchange of customers'' is permitted by the Act.

B. Discussion

37. We conclude that regulations further interpreting the terms of section 275(a)(2) are not needed at this time. Both Ameritech and AICC offer differing interpretations of these terms and disagree on the applicability of section 275 in the context of a specific factual situation. These circumstances have led us to conclude that the scope of section 275(a)(2) is better addressed on a case-by-case basis where the Commission is able to consider all of the facts that may apply to a particular transaction.

V. Nondiscrimination Safeguards

A. Background

38. Section 275(b)(1) requires an incumbent LEC engaged in the provision of alarm monitoring services to ''provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions.'' Prior to the Act, alarm monitoring 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.

39. We noted in the *NPRM* that sections 201 and 202 of the Communications Act already place significant nondiscrimination obligations on common carriers. We concluded that the *Computer III* nondiscrimination provisions continue to apply to the extent they are not inconsistent with the nondiscrimination requirements of section 275(b)(1). We sought comment on whether the existing nondiscrimination and network unbundling rules in *Computer III*, as they apply to BOC provision of alarm monitoring service, are consistent with the requirements of section 275 and whether they should be applied to all incumbent LECs for the provision of alarm monitoring. We also sought comment on whether and what types of specific regulations are necessary to implement section 275(b)(1), to the extent that parties argue that the nondiscrimination provisions of *Computer III* and *ONA* are inconsistent or should not be applied.

B. Discussion

40. *Meaning of Section 275(b)(1).* We conclude that no rules are necessary to implement section 275(b)(1), based on the record before us; we will reconsider this decision if circumstances warrant.

41. As noted above, section 275(b)(1) obligates an incumbent LEC to provide nonaffiliated entities the same network services it provides to its own alarm monitoring operations on nondiscriminatory terms and conditions. We find that this nondiscrimination requirement does not require an incumbent LEC to provide network services that the LEC does not use in its own alarm monitoring operations. In addition, we agree with U S WEST that, if an incumbent LEC is not providing alarm monitoring services, it is not subject to the nondiscrimination requirement of section 275(b)(1).

42. We also conclude that the nondiscrimination requirement of section 275(b)(1) is independent of the nondiscrimination requirement of section 202(a). Section 275(b)(1) requires incumbent LECs to provide nonaffiliated entities, upon reasonable request, ''network services * * * on nondiscriminatory terms and conditions.'' Section 202(a) prohibits ''any unjust and unreasonable discrimination * * *, or * * * any undue or unreasonable preference or advantage'' by common carriers. Because the section 275(b)(1) nondiscrimination bar, unlike that of section 202(a), is not qualified by the terms ''unjust and unreasonable,'' we conclude that Congress intended a more stringent standard in section 275(b)(1).

43. We interpret the term ''network services'' to include all telecommunications services used by an incumbent LEC in its provision of alarm monitoring service. We do not find that this section requires incumbent LECs to provide information services or other services that use LEC facilities or features not part of the LECs' bottleneck network because there is little danger of discrimination in the provision of such services. We also decline to interpret the term ''network services'' as we do the term ''network elements,'' to include ''features, functionalities and capabilities available through those services,'' as AICC suggests. Our definition of ''network elements'' is based on the statutory definition of that term, and we find no basis in section 275 or elsewhere in the Act for the definition of ''network services'' advocated by AICC.

44. *Computer III/ONA Requirements and Section 275(b)(1).* We also conclude

that the *Computer III/ONA* requirements are consistent with the requirements of section 275(b)(1). We affirm our conclusion, therefore, that the *Computer III/ONA* requirements continue to govern the BOCs' provision of alarm monitoring services. In addition, we find that the nondiscrimination requirements of section 275(b)(1) apply to the BOCs' provision of both intraLATA and interLATA alarm monitoring services, as well as other incumbent LECs' provision of alarm monitoring services. The parties have not indicated that there is any inconsistency between the nondiscrimination requirements of *Computer III/ONA* and section 275(b)(1). Section 275(b)(1), 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 all incumbent LECs, as recommended by AT&T.

VI. Procedural Matters

A. Final Regulatory Flexibility Certification

45. 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 received 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).

46. 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.

47. Many of the conclusions adopted in this Order 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 of a ''small business concern.'' Some of the conclusions adopted in this Order apply, however, 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 concern.'' 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 purposes, we will consider small incumbent LECs within this certification and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by SBA as ''small business concerns.''

48. The Commission adopts the conclusions in this Order to ensure the prompt implementation of section 275 of the Act, which addresses the provision of alarm monitoring services by BOCs and other incumbent LECs. We certify that although there may be a substantial number of small incumbent LECs affected by the decisions adopted herein, the conclusions we adopt in this Order will not have a significant economic impact on those affected small incumbent LECs. First, section 275(a) applies only to Bell Operating Companies, prohibiting them, with certain exceptions, from providing alarm monitoring service until February 8, 2001. Thus, in clarifying the definition of ''alarm monitoring service'' and the manner in which we will apply the nondiscrimination provisions of section 275(b)(1), this Order has no significant economic impact on small incumbent LECs. Second, we have not adopted additional rules governing the nondiscrimination requirements of section 275(b), which applies to all incumbent LECs; therefore, there is no change in the *status quo* as to the regulation of incumbent LECs in this regard.

49. Third, our conclusion that section 275(b)(1) 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 pre-existing nondiscrimination requirements under the Act and state law and therefore already are required to respond to complaints of discriminatory behavior or more strictly limit their participation in discriminatory activities. We therefore find that the impact of the Order on incumbent LECs, including small incumbent LECs, of the more stringent standard of section 275(b)(1) will be *de minimis*.

50. Finally, our decision not to extend the *Computer III/ONA* nondiscrimination requirements to all incumbent LECs providing intraLATA alarm monitoring services, as noted in Section V, will prevent any significant economic impact on incumbent LECs, particularly small incumbent LECs, by sparing them the regulatory burdens and economic impact of complying with those additional rules.

51. For all of these reasons, we certify pursuant to section 605(b) of the RFA that the conclusions adopted in this Order will not have a significant economic impact on a substantial number of small entities. The Commission shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. A copy of this certification will also be published in the **Federal Register**.

B. Final Paperwork Reduction Analysis

52. 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 the Commission's proposed changes to its information collection requirements. Specifically, the Commission proposed to extend various reporting requirements, which apply to the BOCs under *Computer III*, to all incumbent LECs pursuant to section 275(b)(1). The OMB, in approving the proposed changes in accordance with the Paperwork Reduction Act, ''encourage[d] the [Commission] to investigate the potential for sunsetting these requirements as competition and other factors allow.'' 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.

VII. Ordering Clauses

53. Accordingly, *It is ordered* that pursuant to sections 1, 2, 4, 201–202, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201–202, 275, and 303(r), the Report and Order is Adopted, and the requirements contained herein will become effective May 5, 1997.

54. *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 (AICC)
Alert Holdings Group, Inc.
Ameritech
Association of Directory Publishers
Association of Telemessaging Services International
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
Joint Parties
MCI Telecommunications Corporation (MCI)
Merchant's Alarm Systems
Midwest Alarm Company, Inc.
Morse Signal Devices
New York State Department of Public Service (New York Commission)
Newspaper Association of America
NSS National Security Service
NYNEX Corporation (NYNEX)
Pacific Telesis Group (PacTel)
Peak Alarm Company, Inc.
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
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

[FR Doc. 97–8605 Filed 4–3–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 27

[GN Docket No. 97–50; FCC 96–278]

The Wireless Communications Service (''WCS''); Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rules which were published Monday, March 3, 1997 (62 FR 9636). The rules contain the licensing procedures and technical standards for the Wireless Communications Service (''WCS'').

EFFECTIVE DATE: March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Josh Roland or Matthew Moses, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction designated the information required to be disclosed on applications in the WCS for a radio station authorization or for consent to assignment or transfer of control, including applications filed on FCC Forms 175 and 600.

Need for Correction

As published, the final rules contains an inadvertent omission in the text which is in need of correction.

Correction of Publication

Accordingly, in FR Doc. 97–5128 published on March 3, 1997 (62 FR 9636), make the following correction. On page 9669, in column 2, the first sentence of paragraph (a)(1) is corrected to read as follows:

§ 27.307 [Corrected]

(a) * * *

(1) A list of its subsidiaries, if any. Subsidiary means any FCC-regulated business five per cent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant. * * *

* * * * *

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–8482 Filed 4–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 96–D028]

Defense Federal Acquisition Regulation Supplement; Streamlined Research and Development Clause Lists

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize continued use of streamlined research and development solicitation and contracting procedures at the contracting activities that participated in the test of such procedures.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax number (703) 602–0350. Please cite DFARS Case 96–D028 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

On October 18, 1994, the Director of Defense Procurement authorized a test of streamlined research and development contracting procedures for complex, detailed requirements for which the Broad Agency Announcement process is inappropriate. This rule will permit the contracting activities that participated in the test to continue to use the streamlined procedures pending development and publication of permanent procedures.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D028 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

§ 235.7001 [Amended]

2. Section 235.7001 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

3. Section 235.7002 is amended by revising the introductory text of paragraph (a), and paragraphs (b) and (d) to read as follows:

§ 235.7002 Applicability.

(a) The following contracting offices have been approved by the Director of Defense Procurement for participation in the test and may use the procedures of this subpart pending implementation of permanent procedures.

* * * * *

(b) Consider using the procedures in this subpart when the acquisition will result in a cost-reimbursement type contract that is valued at $10,000,000 or less and meets the criteria for research and development as defined in 235.001 and FAR 35.001. The procedures in this subpart shall not be used for—

(1) Contracts to be performed outside of the United States and Puerto Rico;

(2) Contracts denominated in other than U.S. dollars; or

(3) Acquisitions using simplified acquisition procedures.

* * * * *

(d) Regardless of whether or not the RDSS is used, the contracting officer may use the research and development streamlined contracting format at 235.7006 for any acquisition that meets the criteria in 235.7002(b).

§ 235.7003 [Removed and Reserved]

4. Section 235.7003 is removed and reserved.

5. Section 235.7005 is amended by revising the section heading and the introductory text to read as follows:

§ 235.7005 The research and development streamlined contract (RDSC).

The RDSC is the streamlined contract that results from the use of the RDSS or other solicitation procedures that meet the criteria for use of the RDSS. Include the following in RDSCs:

* * * * *

6. Section 235.7006 is revised to read as follows:

§ 235.7006 The research and development streamlined contracting format.

(a) The clauses and provisions prescribed in the exhibit to paragraph (d) of this section are mandatory unless they are marked with an asterisk. Terms, clauses and provisions marked with an asterisk are for use as appropriate as prescribed elsewhere in FAR and DFARS. List in the solicitation published in the Commerce Business Daily (see paragraph (d)(A.1)(v) of this section) the numbers of any asterisked terms, clauses, and provisions that apply to the acquisition, and the text of any special provisions, instructions, or notices that are approved for use in the solicitation.

(b) At the time of contract award to educational or nonprofit institutions, delete those clauses and provisions that do not apply to such institutions, and, as necessary, replace with the appropriate alternatives. For example, FAR 52.203–10 will be included in all solicitations, but deleted in awards to educational institutions.

(c) The use of FAR and DFARS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the research and development streamlined contract format provided by the Exhibit in this section, shall be approved in accordance with agency procedures.

(d) The research and development streamlined contract format is set forth in the following exhibit:

Exhibit—Research and Development Streamlined Contract Format

Part I—The Schedule

Section A, Solicitation/Contract Form

(A.1) Research and development streamlined solicitation (RDSS). Include the following in the RDSS:

(i) Solicitation number;

(ii) A statement that award will be made in accordance with DFARS Subpart 235.70, Research and Development Streamlined Contracting Procedures;

(iii) A statement as to whether the RDSS includes a supplemental package;

(iv) Instructions for obtaining any supplemental package, including use of Electronic Bulletin Boards, as appropriate;

(v) A statement that all of the mandatory terms, clauses, and provisions, and certain asterisked terms, clauses, and provisions in DFARS 235.7006 are incorporated by reference. This statement must list the asterisked terms, clauses, and provisions that apply. (for example: ''All of the mandatory terms, clauses, and provisions at DFARS 235.7006, Research and development streamlined contract format, and the following items listed therein for use as applicable are incorporated by reference: B.4, B.5, C.1, E.3, I.80.'') Additions to and deletions from the clauses and provisions listed in the standard format, and data required to be inserted in blanks in clauses or solicitation provisions, when known at the time the solicitation is published, must be clearly annotated in the RDSS;

(vi) A statement that the clauses and provisions are those in effect through FAC _____, DAC _____, and Departmental Letter No. _____;

(vii) A statement that the standard evaluation factors at Section M of this subpart apply, or, if they do not apply, the applicable evaluation factors. If the standard evaluation factors are modified in any way, the modifications must be clearly expressed so that the result is unambiguous. Additions to and deletions from Section M must be clearly annotated in the RDSS;

(viii) Identification of data requirements by including either:

(A) A summary of the data requirements that identifies all deliverable data items, and specifies number of copies and frequency of delivery; or

(B) A notice that DD Form 1423, Contract Data Requirements List, is included in the supplemental package;

(ix) Type of cost contract contemplated;

(x) Estimated period of performance;

(xi) Notice of preproposal conference, if applicable, with location, date, and time;

(xii) Notice of small business or other set-aside, if applicable;

(xiii) Notice of place, date, and time technical and cost proposals are due;

(xiv) Number of copies of technical and cost proposals required;

(xv) Proposal page limitations;

(xvi) Whether multiple awards are contemplated;

(xvii) Name, address, and telephone number of contracting officer;

(xviii) Any applicable Commerce Business Daily numbered notes;

(xix) Statement that a DD Form 254, Contract Security Classification Specification, will be included in the supplemental package, if appropriate;

(xx) The statement of work, or a statement that the statement of work is in the supplemental package; and

(xxi) The applicable Standard Industrial Classification (SIC) code and small business size standard.

(A.2) Research and development streamlined contract (RDSC). Use either Standard Form (SF) 33, Solicitation, Offer and Award, or SF 26, Award/Contract.

Section B, Supplies or Services and Prices/ Costs

(Use appropriate CLIN structure. Include item descriptions.)

(B.1) Type of Contract.

This is a _____ Contract.

*(B.2) Estimated Cost. (Use when no fee will be paid)

The total estimated cost for this contract is $_____

The total estimated cost for this contract is $_____

*(B.3) Cost-Plus-Fixed-Fee. (Applicable to fee-bearing contracts)

The total estimated cost for this contract $_____

The total fixed fee for this contract is $ _____

*(B.4) Award Fee. (Applicable to award fee-type contracts)

In addition to the fee set forth elsewhere in the contract, the Contractor may earn an award fee up to $_____ on the basis of performance during the performance periods, and in the amount specified in the award fee plan.

(i) Monitoring of performance. The contractor's performance will be monitored continually by the Award Fee Review Board.

(ii) Award fee plan. This plan provides necessary administrative information, including the evaluation criteria and schedule, for the purpose of implementing the award fee provision. Upon contract award, the Contractor will be provided the award fee plan subject to any withholding authorized by the _____ (insert appropriate contracting official).

(iii) Modification of award fee plan. Before the start of an evaluation period, the Government may unilaterally—

(A) Modify the award fee performance evaluation criteria and areas applicable to the evaluation period; and

(B) Redistribute the remaining award fee dollars among the remaining periods. The Contracting Officer will notify the Contractor in writing of the changes and modify the award fee plan accordingly.

(iv) The following standards of performance shall be used in determining whether and to what extent the Contractor has earned or may be entitled to receive any award fee:

(A) Excellent performance: Contractor performance of virtually all contract task requirements is uniformly well above standard and exceeds the standard by a substantial margin in numerous significant tangible or intangible benefits to the Government (i.e., improved quality, responsiveness, increased timeliness, or generally enhanced effectiveness of operations). There are few areas for improvement; these areas are all minor; there are no recurring problems; and management has initiated effective corrective action whenever needed.

(B) Very good performance: The contractor's performance of most contract task requirements is uniformly well above standard and exceeds the standard in many significant areas. Although some areas may require improvements these are minor and are more than offset by better performance in other areas. Few, if any, recurring deficiencies have been noted in the Contractor's performance and the contractor has demonstrated/taken satisfactory corrective action. Innovative management actions have resulted intangible or intangible benefits to the Government (i.e., improved quality, responsiveness, increased quantity, increased timeliness, or generally enhanced effectiveness of operations).

(C) Good performance: Contractor's performance of most contract task requirements meets the standard, and it exceeds the standard in several significant areas. While the remainder of the contractor's effort generally meets contract requirements, areas requiring improvement are more than offset by better performance in other areas. Management actions taken or initiated have resulted in some demonstrated benefits to the Government (i.e., improved quality, responsiveness, timeliness, or effectiveness of operations).

(D) Marginal performance: Contractor performance meets most contract standards. Although there are areas of good or better performance, these are more or less offset by lower rated performance in other areas. Little additional tangible benefit is observable due to contractor effort or initiative.

(E) Submarginal performance: Contractor performance is below standard in several areas. Contractor performance in accordance with requirements is inconsistent. Quality, responsiveness, timeliness, and/or economy in many areas require attention and action. Corrective actions have not been taken, or are ineffective. Overall submarginal performance shall not be given award fee.

(v) Maximum payable award fee. The maximum payable award fee in any evaluation period shall be determined based on the amount set forth in the applicable contract line items and a percentage based on the Government's evaluation of the Contractor's performance as follows:

Performance	Percent of maximum award fee payable
Excellent	__% to __%
Very Good	__% to __%
Good	__% to __%
Marginal	__% to __%
Submarginal	0%

(vi) Self-evaluation. The Contractor may submit to the Contracting Officer within five working days after the end of each award fee evaluation period, a brief written self-evaluation of its performance for the period. This statement may contain information which may be used to assist the Award Fee Review Board in its evaluation of the Contractor's performance during the period.

(vii) Disputes. The decision of the Fee Determining Official on the amount of award fee will not be subject to the ''Disputes'' clause.

(viii) Award fee payment.

(A) As determined by the Fee Determining Official, payment of any award fee will not be subject to the ''Allowable Cost and Payment'' and ''Termination (Cost Reimbursement)'' clauses of this contract.

(B) The Contractor may submit vouchers for the award fee immediately upon receipt of the Contracting Officer's written award fee notification.

*(B.5) Target Cost and Fee. (Applicable to incentive fee-type contracts. The following information shall be inserted into the appropriate blanks in clause I.54.) The target cost is $_____.

The target fee is $_____.

The minimum fee the contractor may receive is $_____.

The maximum fee the contractor may receive is $_____.

Share ratio:_____. (Government/Contractor)

*(B.6) Payment of Fixed Fee on Cost-Plus-Fixed-Fee (Completion) Contracts. The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Administrative Contracting Officer, subject to the withholding provisions of the contract.

*(B.7) Payment of Fixed Fee on Cost-Plus-Fixed-Fee (Term) Contracts. (Applicable to cost-plus-fixed-fee (term) contracts when the clause at FAR 52.216–8 is used.) Pursuant to the clause at FAR 52.216–8, Fixed Fee, and subject to withholding provisions contained in that clause or elsewhere in this contract, fixed fee shall be paid to the Contractor based upon the percentage of hours completed as related to the total hours set forth in the contract on each voucher. The Contractor shall certify to the level of effort expended during that period. The Government technical representative shall sign a statement on the certificate that the work performed during the period has been performed satisfactorily.

*(B.8) Options. (Applicable to contracts with options) The Government may require performance of the work required by CLIN _____. The Contracting Officer shall provide written notice of intent to exercise this option to the Contractor on or before _____. If the Government exercises this option by _____, the Contractor shall perform at the estimated cost and fee, if applicable, set forth as follows:

Estimated Cost	$_____
OR	
Estimated Cost	$_____
Fixed Fee	$_____
Total	$_____
OR	
Estimated Cost	$_____
Base Fee	$_____
Maximum Award Fee	$_____
Total	$_____

OR

Target Cost	$_____
Minimum Fee	$_____
Target Fee	$_____
Maximum Fee	$_____
Share Ratio	$_____

Section C, Description/Specifications/Work Statements

*(C.1) Classified Work Statement. (Applicable if Section C is classified.) The description/specifications/work statement entitled, ''_____,'' classified _____, dated _____, is incorporated herein by reference. A copy may be obtained from the Contracting Officer, if a need-to-know is established and appropriate security clearance has been granted.

*(C.2) Unclassified Work Statement. (Applicable if Section C is unclassified and is attached to the contract.) The description/specifications/work statement is included as Attachment _____.

*(C.3) Contractor's Technical Proposal. (Applicable if portions of the Contractor's proposal are incorporated by reference. Include only those portions of the proposal that specifically describe the work to be performed.) The Contractor's proposal entitled, ''_____,'' pages _____, dated _____, is incorporated herein by reference.

Section D, Packing and Marking

(D.1) Commercial Packaging.

Preservation, packaging, and packing shall provide adequate protection against physical damage during shipment for all deliverable items in accordance with standard commercial practices.

Section E, Inspection and Acceptance

(1) Federal Acquisition Regulation clauses:

*(E.1)	52.246–8	Inspection of Research and Development—Cost Reimbursement.
*(E.2)	52.246–8	Inspection of Research and Development—Cost Reimbursement (Alternate I).
*(E.3)	52.246–9	Inspection of Research and Development (Short Form).

(2) Defense Federal Acquisition Regulation Supplement clauses.

*(E.4)	252.246–7000	Material Inspection and Receiving Report.

(3) Other provisions.

(E.5) Inspection and Acceptance.

Inspection and acceptance of any and all deliverables under this contract will be accomplished by the contracting officer or a designated representative.

Section F, Deliveries or Performance

*(F.1) FAR 52.242–15 Stop Work Order—Alternate I.

(F.2) Delivery of Reports.

(i) All data shall be delivered in accordance with the delivery schedule shown on the Contract Data Requirements List, attachments, or as incorporated by reference.

(ii) All reports and correspondence submitted under this contract shall include the contract number and project number and be forwarded prepaid. A copy of the letters of transmittal shall be delivered to the Procuring Contracting Officer (PCO) and the Administrative Contracting Officer (ACO). The addresses are set forth on the contract award cover page. All other address(es) and code(s) for consignee(s) are as set forth in the contract or incorporated by reference.

*(F.3) FAR 52.247–55 F.O.B. Point of Delivery of Government-Furnished Property.

*(F.4) The work under this contract shall commence on _____ and be completed no later than _____.

Section G, Contract Administration Data

*(G.1) Contractor Payment Address. (To be filled in at time of contract award. Applicable if the Contractor has specified a payment address other than the address shown on the cover page of the contract.)

Contractor Payment Address:

_____

_____

_____

*(G.2) Incremental Funding. (Applicable to incrementally funded contracts.) This contract is incrementally funded pursuant to the Limitation of Funds clause, FAR 52.232–22. Funds are hereby obligated in the amount of $_____ and it is estimated that they are sufficient for contract performance through _____.

*(G.3) Incremental Funding. (Applicable to incrementally funded contracts.) This contract is incrementally funded pursuant to the Limitation of Funds clause, FAR 52.232–22. Funds are hereby obligated in the amount $_____ and it is estimated that they are sufficient for contract performance through _____. Additional incremental funding planned, but not obligated, is:

(Insert funding schedule.)

*(G.4) Request for Equal Opportunity Preaward Clearance of Subcontracts. (Applicable to subcontracts over $1 million.) To provide the Contracting Officer with adequate time to process the Contractor's request for preaward clearance of subcontracts as required by FAR 52.222–28, the prime contractor shall request preaward clearance through the Contracting Officer at least 30 calendar days before the proposed award date, unless the cognizant Department of Labor Compliance Office agrees to a shorter time.

*(G.5) Contracting Officer's Representative. (To be filled in at time of contract award.) The Contracting Officer's representative for this contract is:

_____

_____

_____

*(G.6) Invoice Instructions. (Insert invoice instructions.)

(G.7) Accounting and Appropriation Data (Insert accounting and appropriation data.)

Section H, Special Contract Requirements

(H.1) Incorporation of Section K by Reference. Pursuant to Federal Acquisition Regulation (FAR) 15.406–1(b), Section K of the solicitation is hereby incorporated by reference.

*(H.2) Rent-Free Use of Government Property. The Contractor may use on a rent-free, noninterference basis, as necessary for the performance of this contract, the Government property accountable under contract(s) _____. The Contractor is responsible for scheduling the use of all property covered by the above referenced contract(s) and the Government shall not be responsible for conflicts, delays, or disruptions to any work performed by the Contractor due to use of any or all such property under this contract or any other contracts under which use of such property is authorized.

*(H.3) Government-Furnished Property. The Government will furnish to the Contractor for use in the performance of the contract on a rent-free basis the Government-owned property listed in an attachment to this contract, subject to the provisions of the Government Property Clause of the Contract Clauses.

(H.4) Scientific/Technical Information. If not already registered, the Contractor is encouraged to register for Defense Technical Information Center (DTIC) service by contacting the following:

Defense Technical Information Center, Attn: Registration Section (DTIC–BCS), 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–0944, (703) 767–8273 or 1–800–CAL–DTIC (225–3842), menu selection 2.

To avoid duplication of effort and conserve scientific and technical resources, the Contractor is encouraged to search existing sources in DTIC to determine the current state of the art concepts, studies, etc.

(H.5) Reserved.

*(H.6) (Insert nonstandard clause(s) approved in accordance with agency procedures, if applicable.)

Part II—Contract Clauses

Section I, Contract Clauses

(I.1)	52.252–2	Clauses Incorporated by Reference.
(I.2)	52.202–1	Definitions.
(I.3)	(1)	
(I.4)	52.203–3	Gratuities.
(I.5)	52.203–5	Covenant Against Contingent Fees.
(I.6)	52.203–7	Anti-Kickback Procedures.
(I.7)	52.203–10	Price or Fee Adjustment for Illegal or Improper Activity.

(I.8)	52.209–6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(I.9)	(1)	
(I.10)	(1)	
(I.11)	(1)	
(I.12)	52.215–26	Integrity of Unit Prices.
(I.13)	52.215–33	Order of Precedence.
(I.14)	52.216–7	Allowable Cost and Payment (Modified in accordance with 16.307 as applicable).
(I.15)	(1)	
(I.16)	(1)	
(I.17)	(1)	
(I.18)	(1)	
(I.19)	52.222–3	Convict Labor.
(I.20)	52.222–26	Equal Opportunity.
(I.21)	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans.
(I.22)	52.222–36	Affirmative Action for Handicapped Workers.
(I.23)	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
(I.24)	52.223–6	Drug-Free Workplace.
(I.25)	52.225–11	Restrictions on Certain Foreign Purchases.
(I.26)	52.227–1	Authorization and Consent—Alternate I.
(I.27)	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement.
(I.28)	52.228–7	Insurance—Liability to Third Persons.
(I.29)	52.232–9	Limitation on Withholding of Payments.
(I.30)	52.232–23	Assignment of Claims.
(I.31)	52.232–25	Prompt Payment.
(I.32)	(1)	
(I.33)	52.233–1	Disputes.
(I.34)	52.233–3	Protest After Award—Alternate I.
(I.35)	52.242–1	Notice of Intent to Disallow Costs.
(I.36)	52.242–13	Bankruptcy.
(I.37)	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) Alternate I.
(I.38)	52.244–5	Competition in Subcontracting.
(I.39)	52.247–1	Commercial Bill of Lading Notations.
(I.40)	52.249–14	Excusable Delays.
(I.41)	52.253–1	Computer-Generated Forms.
(I.42)	(1)	
(I.43)	(1)	
*(I.44)	52.204–2	Security Requirements.
*(I.45)	52.204–2	Security Requirements—Alternate I (For educational institutions).
*(I.46)	52.215–22	Price Reduction for Defective Cost or Pricing Data.
*(I.47)	52.215–23	Price Reduction for Defective Cost or Pricing DataModifications.
*(I.48)	52.215–24	Subcontractor Cost or Pricing Data.
*(I.49)	52.215–25	Subcontractor Cost or Pricing Data-Modifications.
*(I.50)	52.215–27	Termination of Defined Benefit Pension Plans (Except educational institutions).
*(I.51)	52.215–31	Waiver of Facilities Capital Cost of Money (Except educational institutions).
*(I.52)	52.215–39	Reversion or Adjustment of Plans for Postretirement Benefits Other than Pension (PRB).
*(I.53)	52.216–8	Fixed Fee.
*(I.54)	52.216–10	Incentive Fee.
*(I.55)	52.216–11	Cost Contract—No Fee.
*(I.56)	52.216–11	Cost Contact-No Fee—Alternate I.
*(I.57)	52.216–12	Cost-Sharing Contract-No Fee.
*(I.58)	52.216–12	Cost-Sharing Contract-No Fee—Alternate I.
*(I.59)	52.216–15	Predetermined Indirect Cost Rates (For educational institutions only).
*(I.59A)	52.216–7002	Alternate A (For educational institutions only).
*(I.60)	52.219–6	Notice of Total Small Business Set-Aside.
*(I.61)	52.219–6	Notice of Total Small Business Set-Aside—Alternate I.
(I.62)	(1)	
*(I.63)	(1)	
*(I.64)	52.219–14	Limitations on Subcontracting.
*(I.65)	52.219–16	Liquidated Damages-Small Business Subcontracting Plan.
*(I.66)	(1)	
*(I.67)	52.222–1	Notice to the Government of Labor Disputes.
*(I.68)	52.222–2	Payment for Overtime Premiums (Insert applicable information in paragraph (a)).
*(I.69)	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts.
*(I.70)	52.223–2	Clean Air and Water.
*(I.71)	52.223–3	Hazardous Material Identification and Material Safety Data.
*(I.72)	52.223–7	Notice of Radioactive Materials (Insert in paragraph (a): *21*).
*(I.73)	52.226–1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises.
*(I.74)	52.227–10	Filing of Patent Applications-Classified Subject Matter.
*(I.75)	52.227–11	Patent Rights-Retention by the Contractor (Short Form).
*(I.76)	52.227–12	Patent Rights-Retention by the Contractor (Long Form).
*(I.77)	52.227–13	Patent Rights-Acquisition by the Government.
(I.78)	(1)	
(I.79)	(1)	
*(I.80)	52.229–8	Taxes—Foreign Cost-Reimbursement Contracts.
*(I.81)	52.229–10	State of New Mexico Gross Receipts and Compensating Tax (Insert applicable information in paragraph (c)).

*(I.82)	52.230–2	Cost Accounting Standards (Except if exempted).
*(I.83)	52.230–3	Disclosure and Consistency of Cost Accounting Practices (Except if exempted).
*(I.84)	52.230–6	Administration of Cost Accounting Standards (Except educational institutions).
*(I.85)	52.232–17	Interest.
*(I.86)	52.232–20	Limitation of Cost.
*(I.87)	52.232–22	Limitation of Funds.
*(I.88)	52.232–23	Assignment of Claims-Alternate I.
*(I.89)	52.233–1	Disputes-Alternate I.
*(I.90)	52.237–2	Protection of Government Buildings, Equipment and Vegetation.
*(I.91)	52.242–10	F.O.B. Origin-Government Bills of Lading or Prepaid Postage.
*(I.92)	52.242–11	F.O.B. Origin-Government Bills of Lading or Indicia Mail.
*(I.93)	52.242–12	Report of Shipment (REPSHIP).
*(I.94)	52.243–2	Changes—Cost-Reimbursement-Alternate V.
*(I.95)	52.243–6	Change Order Accounting.
*(I.96)	52.243–7	Notification of Changes (30 Calendar Days).
*(I.97)	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).
*(I.98)	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)-Alternate I (For educational institutions and nonprofit organizations).
*(I.99)	52.245–19	Government Property Furnished ''As Is''.
*(I.100)	52.246–23	Limitation of Liability.
*(I.101)	52.246–24	Limitation of Liability-High Value Items.
*(I.102)	52.246–24	Limitation of Liability-High Value Items-Alternate I.
*(I.103)	52.246–25	Limitation of Liability-Services.
*(I.104)	52.247–63	Preference for U.S.-Flag Air Carriers.
*(I.105)	52.247–66	Returnable Cylinder.
*(I.106)	52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
*(I.107)	52.249–6	Termination (Cost-Reimbursement).
*(I.108)	52.251–1	Government Supply Sources.
(I.109)	252.201–7000	Contracting Officer's Representative.
(I.110)	252.203–7001	Special Prohibition on Employment.
(I.111)	(1)	
(I.112)	(1)	
(I.113)	252.204–7003	Control of Government Personnel Work Product.
(I.114)	252.209–7000	Acquisitions from Subcontractors Subject to On-Site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.
(I.115)	252.225–7012	Preference for Certain Domestic Commodities.
(I.116)	252.225–7031	Secondary Arab Boycott of Israel.
(I.117)	(1)	
(I.118)	(1)	
(I.119)	(1)	
(I.120)	252.227–7030	Technical Data-Withholding of Payment.
(I.121)	252.227–7037	Validation of Restrictive Markings on Technical Data.
(I.122)	252.231–7000	Supplemental Cost Principles.
(I.123)	252.232–7006	Reduction or Suspension of Contract Payments Upon Finding of Fraud.
(I.124)	252.242–7000	Postaward Conference.
(I.125)	(1)	
(I.126)	252.247–7023	Transportation of Supplies by Sea.
*(I.127)	(1)	
*(I.128)	252.203–7002	Display of DoD Hotline Poster.
*(I.129)	252.204–7000	Disclosure of Information.
*(I.130)	252.204–7002	Payment for Subline Items Not Separately Priced.
*(I.131)	252.205–7000	Provision of Information to Cooperative Agreement Holders.
*(I.132)	252.215–7000	Pricing Adjustments.
*(I.133)	252.215–7002	Cost Estimating System Requirements.
*(I.134)	252.219–7001	Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.
*(I.134A)	252.219–7001	Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, Alternate I.
*(I.135)	252.219–7002	Notice of Small Disadvantaged Business Set-Aside.
*(I.135A)	252.219–7002	Notice of Small Disadvantaged Business Set-Aside, Alternate I.
*(I.136)	252.219–7003	Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).
*(I.137)	252.219–7004	Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program).
*(I.138)	252.219–7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions (. . . To be negotiated ____%).
*(I.139)	252.219–7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions—ALTERNATE I (. . . To be negotiated ____%).
*(I.140)	252.219–7006	Notice of Evaluation Preference for Small Disadvantaged Business Concerns.
*(I.141)	252.223–7001	Hazard Warning Labels.
*(I.142)	252.223–7002	Safety Precautions for Ammunitions and Explosives.
*(I.143)	252.223–7003	Change in Place of Performance—Ammunition and Explosives.
*(I.144)	252.223–7004	Drug-Free Work Force.
*(I.145)	252.225–7014	Preference for Domestic Specialty Metals.
*(I.146)	252.225–7016	Restriction on Acquisition of Ball and Roller Bearings.
*(I.147)	252.225–7025	Foreign Source Restrictions.
*(I.148)	252.225–7026	Reporting of Contract Performance Outside the United States.
*(I.149)	252.225–7032	Waiver of United Kingdom Levies.

*(I.150)	252.226–7000	Notice of Historically Black College or University and Minority Institution Set-Aside.
*(I.151)	252.227–7026	Deferred Delivery of Technical Data or Computer Software.
*(I.152)	252.227–7027	Deferred Ordering of Technical Data or Computer Software.
*(I.153)	(1)	
*(I.154)	252.227–7034	Patent—Subcontracts.
(I.155)	252.227–7036	Declaration of Technical Data Conformity.
*(I.156)	252.227–7039	Patents—Reporting of Subject Inventions.
*(I.157)	(1)	
*(I.158)	252.232–7000	Advanced Payment Pool (For educational institutions and nonprofit organizations).
*(I.159)	(1)	
*(I.160)	252.235–7002	Animal Welfare.
*(I.161)	252.242–7002	Submission of Commercial Freight Bills for Audit.
*(I.162)	252.242–7003	Application for U.S. Government Shipping. Documentation/Instructions.
*(I.163)	252.242–7004	Material Management and Accounting System.
*(I.164)	252.245–7001	Reports of Government Property.
*(I.165)	252.247–7024	Notification of Transportation of Supplies by Sea.
*(I.166)	*Reserved*	
*(I.167)	252.251–7000	Ordering From Government Supply Sources.
*(I.168)	252.223–7006	Prohibition on Disposal of Toxic and Hazardous Materials.
*(I.169)	252.249–7002	Notification of Anticipated Contract Termination or Reduction.
(I.170)	52.204–4	Printing/Copying Double-Sided on Recycled Paper.
*(I.171)	52.208–8	Helium Requirement Forecast and Required Sources for Helium.
(I.172)	52.215–2	Audit and Records—Negotiation.
*(I.173)	52.215–2	Audit and Records—Negotiation, Alternate II.
(I.174)	52.215–40	Notification of Ownership Changes.
*(I.175)	52.215–42	Requirements for Cost or Pricing Data or Information. Other Than Cost or Pricing Data—Modifications.
*(I.176)	52.215–42	Requirements for Cost or Pricing Data or Information. Other Than Cost or Pricing Data—Modifications, Alternate II.
*(I.177)	52.215–42	Requirements for Cost or Pricing Data or Information. Other Than Cost or Pricing Data—Modifications, Alternate III.
(I.178)	52.219–8	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
*(I.179)	52.219–9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, Alternate II.
*(I.179A)	52.219–9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan—Alternate II.
*(I.180)	52.242–3	Penalties for Unallowable Costs.
(I.181)	52.242–4	Certification of Indirect Costs.
(I.182)	52.244–6	Subcontracts for Commercial Items and Commercial Components.
*(I.183)	52.247–67	Submission of Commercial Transportation Bills to the General Services Administration for Audit.
(I.184)	52.223–14	Toxic Chemical Release Reporting.
(I.185)	252.235–7010	Acknowledgement of Support and Disclaimer.
(I.186)	252.235–7011	Final Scientific or Technical Report.
*(I.187)	252.227–7013	Rights in Technical Data—Noncommercial Items.
*(I.188)	252.227–7013	Rights in Technical Data—Noncommercial Items, Alternate I.
*(I.189)	252.227–7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
*(I.190)	252.227–7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation—Alternate I.
*(I.191)	252.227–7015	Technical Data—Commercial Items.
(I.192)	252.227–7016	Rights in Bid or Proposal Information.
*(I.193)	252.227–7018	Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program.
*(I.194)	252.227–7018	Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program, Alternate I.
*(I.195)	252.227–7019	Validation of Asserted Restrictions—Computer Software.
*(I.196)	252.227–7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends.
*(I.197)	252.209–7005	Military Recruiting on Campus (For educational institutions only).
(I.198)	52.203–6	Restrictions on Subcontractor Sales to the Government.
(I.199)	52.203–8	Cancellation, Recission, and Recovery of Funds for Illegal or Improper Activity.
(I.200)	52.203–12	Limitation on Payments to Influence Certain Federal Transactions.
*(I.201)	52.211–15	Defense Priority and Allocation Requirements.
*(I.202)	52.215–42	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, Alternative IV.
*(I.203)	52.230–5	Cost Accounting Standards—Educational Institution.
*(I.204)	52.232–18	Availability of Funds.
(I.205)	52.232–33	Mandatory Information for Electronic Funds Transfer Payment.
*(I.206)	52.245–18	Special Test Equipment.
*(I.207)	52.252–6	Authorized Deviations in Clauses.
*(I.208)	252.209–7004	Reporting of Commercial Transactions with the Government of a Terrorist Country.
*(I.209)	252.223–7007	Safeguarding Sensitive Conventional Arms, Ammunition and Explosives.
*(I.210)	52.223–11	Ozone-Depleting Substances.

[1] Reserved.

Part III—List of Documents, Exhibits, and Other Attachments

Section J, List of Attachments

Use attachments and exhibits to inform the contractor of local information such as:

(1) Procedures for laboratory access;

(2) Laboratory hours of operation;

(3) Special procedures related to unique laboratory working environments which are not covered by FAR or DFARS; and

(4) Base support or government property information.

*(J.1) List of Attachments:

*(J.2) List of Exhibits:

Part IV—Representations and Instructions

Section K, Representations, Certifications and Other Statements of Offerors or Quoters

The following solicitation provisions require representations, certifications, or the submission of other information by offerors. They are mandatory, and are included by reference. Full text copies of these provisions are available from the Contracting Officer and must be completed before contract award.

(K.1)	(1)	
(K.2)	(1)	
(K.3)	52.203–11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(K.4)	52.204–3	Taxpayer Identification.
(K.5)	52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
(K.6)	52.215–6	Type of Business Organization.
(K.7)	52.215–11	Authorized Negotiators.
(K.8)	52.215–20	Place of Performance.
(K.9)	(1)	
(K.10)	(1)	
(K.11)	(1)	
(K.12)	(1)	
(K.13)	52.222–21	Certification of Nonsegregated Facilities.
(K.14)	52.222–22	Previous Contracts and Compliance Reports.
(K.15)	52.222–25	Affirmative Action Compliance.
(K.16)	52.223–1	Clean Air and Water Certification.
(K.17)	(1)	
(K.18)	52.227–6	Royalty Information.
(K.19)	52.230–1	Cost Accounting Standards Notices and Certification.
(K.20)	(1)	
(K.21)	252.209–7002	Disclosure of Ownership or Control by a Foreign Government.
(K.22)	252.219–7000	Small Disadvantaged Business Concern Representation (DoD Contracts).
(K.23)	(1)	
(K.24)	(1)	
(K.25)	252.226–7001	Historically Black College or University and Minority Institution Status.
(K.26)	(1)	
(K.27)	252.247–7022	Representation of Extent of Transportation by Sea.
(K.28)	52.204–5	Women-Owned Business.
(K.29)	(1)	
(K.30)	52.219–1	Small Business Program Representation.
(K.31)	52.223–13	Certification of Toxic Chemical Release Reporting.
(K.32)	252.209–7001	Disclosure of Ownership or Control by the Government of a Terrorist Country.
(K.33)	252.209–7003	Disclosure of Commercial Transactions with the Government of a Terrorist Country.
(K.34)	252.209–7004	Reporting of Commercial Transactions with the Government of a Terrorist Country.
(K.35)	(1)	
(K.36)	(1)	
(K.37)	52.226–2	Historically Black College or University and Minority Institution Representation.
		Section L. Instructions, Conditions, and Notices to Offerors or Quoters
(L.1)	52.252–1	Solicitation Provisions Incorporated by Reference.
(L.2)	(1)	
(L.3)	52.211–2	Availability of Specifications and Standards Listed in the DoD Index of Specifications and Standards (DODISS).
(L.4)	52.215–5	Solicitation Definitions.
(L.5)	52.215–7	Unnecessarily Elaborate Proposals or Quotations.
(L.6)	52.215–8	Amendments to Solicitations.
(L.7)	52.215–9	Submission of Offers.
(L.8)	52.215–10	Late Submissions, Modifications, and Withdrawals of Proposals.
(L.9)	52.215–12	Restriction on Disclosure and Use of Data.
(L.10)	52.215–13	Preparation of Offers.
(L.11)	52.215–14	Explanation to Prospective Offerors.
(L.12)	52.215–15	Failure to Submit Offer.
(L.13)	52.215–16	Contract Award.
*(L.14)	(1)	
(L.15)	52.216–1	Type of Contract (See 235.7006(d)(B.1)).
(L.16)	52.222–24	Preaward On-Site Equal Opportunity Compliance Review.
(L.17)	(1)	
(L.18)	52.233–2	Service of Protest (See 235.7006(d)(A.1)(xvii)).
*(L.19)	52.237–1	Site Visit.
(L.20)	52.252–5	Authorized Deviations in Provisions.
(L.21)	252.204–7001	Commercial and Government Entity (CAGE) Code Reporting.
(L.22)	(1)	
(L.23)	52.215–16	Contract Award—Alternate II.
*(L.24)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
*(L.25)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate I.
*(L.26)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate II.

*(L.27)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate III.
*(L.28)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate IV.
(L.29)	252.227–7017	Identification and Assertion of Use, Release, or Disclosure Restrictions.
(L.30)	252.227–7028	Technical Data or Computer Software Previously Delivered to the Government.
*(L.31)	52.215–30	Facilities Capital Cost of Money (Except educational institutions).
(L.32)	52.204–6	Contractor Identification Number—Data Universal Numbering System (DUNS) Number.
*(L.33)	52.211–14	Notice of Priority Rating for National Defense Use.

(L.34 through L.99) Reserved.

*(L.100) (Insert special instructions, conditions, or notices to offerors, if applicable).

(L.101) Government-Furnished Property.

No material, labor, or facilities will be furnished by the Government unless provided for in the solicitation.

(L.102) Proposal Preparation and Submission Instructions.

(i) Page limitation, format.

(A) A proposal shall be prepared in separate volumes with the page limit and number of copies specified as follows. The table of contents and tabs are exempt from the page limits. No cross-referencing between volumes for essential information is permitted except where specifically set forth herein. The following volumes of material will be submitted:

Title	Copies	Maximum page limits
Cost	As specified in solicitation summary.	*50
Technical ...	As specified in solicitation summary.	100

*The 50-page cost proposal is a goal not a limit. The Contractor may use additional pages if necessary to comply with public law.

(B) Any technical proposal pages submitted that exceed the page limitations set forth in paragraph (i)(A) of this subsection L.102 will not be read or evaluated. Proposal pages failing to meet the format in paragraph (i)(D) of this subsection L.102 will not be read or evaluated.

(C) No program cost data or cross-reference to the cost proposal will be included in any other volume.

(D) Format of the proposal volumes shall be as follows:

(1) Proposals will be prepared on 8½ x 11 inch paper except for foldouts used for charts, tables, or diagrams, which may not exceed 11 x 17 inches. Foldouts will not be used for text. Pages will have a one inch margin.

(2) A page is defined as one face of a sheet of paper containing information. Two pages may be printed on one sheet.

(3) Type size will be no smaller than 10 point character height (vertical size) and no more than an average of 12 characters per inch. Use of type-setting techniques to reduce type size below 10 points or to increase characters beyond 12 per inch is not permitted. Such techniques are construed as a deliberate attempt to circumvent the intent of page limitations set forth in paragraph (i)(A) of this subsection L.102.

(4) Proposal must lie flat when open; elaborate binding is not desirable.

(5) No models, mockups, or video tapes will be accepted.

(6) Technical proposals will be prepared in the same sequence as the statement of work.

(ii) Content.

All proposals must be complete and respond directly to the requirements of the solicitation. The factors and subfactors listed in Section M of the solicitation shall be addressed. Cost and supporting data shall be included only in the cost volume. All other information shall be included in the technical volume.

(L.103) The Government may make multiple awards resulting from this solicitation.

Section M, Evaluation Factors for Award

Use of the standard evaluation factors is preferred. If the standard evaluation factors are modified in any way, the modifications must be clearly expressed so that the result is unambiguous. Additions to and deletions from the contents of this Section M must be clearly annotated in the solicitation summary (see 235.7006(d)(A.1)(vii)).

*(M.1) FAR 52.217–5 Evaluation of Options (Applicable if the solicitation indicates that options are anticipated in the resulting contract. When this provision is included, evaluation criteria for options shall be included in Section M.)

*(M.2) Proposal Evaluation Procedures and Basis for Award. Proposals will be evaluated and award made as follows:

(i) Basis for award.

The award decision will be based on evaluation of all factors and subfactors set forth in this solicitation. The Government may select the source whose proposal offers the greatest value to the Government in terms of technical, cost or price, and other factors set forth in the solicitation. The source selected may or may not have the lowest proposed total costs.

(ii) Evaluation factors.

Proposals will be evaluated in accordance with the following factors. The technical factor is more important than the cost factor. The technical subfactors are in descending order of importance unless otherwise stated in the solicitation. The cost subfactors are of equal weight.

(A) Technical.

(1) Technical approach. The soundness of the offeror's technical approach, including the offeror's demonstrated understanding of the technical requirement.

(2) Qualification. The experience and qualifications of the proposed personnel relevant to the proposed task. The quantity and quality of the offeror's corporate experience relevant to the proposed task.

(3) Management. The degree to which the offeror demonstrates the ability to effectively and efficiently manage and administer the program to a successful conclusion.

(4) Facilities. The degree to which the proposed facilities enable accomplishment of the proposed effort.

(B) Cost.

(1) Reasonableness. Proposed estimated cost and fee (if any).

(2) Completeness. The adequacy of the identification, estimation and support of all relevant costs.

(3) Realism. The consistency of the cost proposal with the technical effort proposed, the organizational structure, method of operations and cost accounting practices.

*(M.3) 52.215–34 Evaluation of Offers for Multiple Awards.

[FR Doc. 97–8642 Filed 4–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–97–2133 (HM–225)]

RIN 2137–AC97

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Clarification

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Clarification and change of a workshop date.

SUMMARY: This action clarifies the size and location of a marking provision required by an interim final rule published in the **Federal Register** on February 19, 1997. This clarification is in response to inquiries received by RSPA. Additionally, in response to a request from the National Propane Gas Association RSPA announces a change of date for a public workshop originally scheduled for April 8–9, 1997.

DATES: The workshop is rescheduled to April 16–17, 1997, from 9:00 a.m. to 5:00 p.m. in Washington, DC. If all presentations and reviews are completed on April 16, the workshop will be adjourned without reconvening on April 17, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400

Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

ADDRESSES: The public workshop will be held in Room 8236–40, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: RSPA received general requests for clarification concerning the size and placement of the marking required by § 171.5(b) of the Hazardous Materials Regulations (49 CFR parts 171–180). This temporary marking requirement was adopted in an interim final rule (IFR) published in the **Federal Register** on February 19, 1997 [62 FR 7638]. The marking dimensions specified in the IFR are the minimum acceptable size markings. It is permissible to make the marking proportionally larger. Also, in the IFR, RSPA did not indicate the exact location for placing this marking on the cargo tank. On February 21, 1997, RSPA responded to a request for clarification from the National Tank Truck Carriers, Inc. by stating that the marking should be placed at or near a tank's specification plate.

In the IFR, RSPA announced that two public workshops would be held in Washington, DC. The first workshop was held on March 4–5, 1997. It served as a forum for exchange of information and ideas concerning emergency discharge control systems on cargo tanks. The second workshop, now scheduled for April 16–17, 1997, will focus on review of prototype designs for proposed product discharge control systems, and a review of research and development actions initiated by industry to meet the requirements specified in the HMR.

Issued in Washington, DC, on March 31, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–8612 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 960730211–7066–03; I.D. No. 031797D]

North Atlantic Right Whale Protection; Emergency Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: This emergency interim rule implements restrictions on use of lobster pot gear in the Cape Cod Bay right whale critical habitat from April 1, 1997, through May 15, 1997. It also prohibits lobster pot fishing in the Great South Channel right whale critical habitat area from April 1, 1997, through June 30, 1997, until gear modifications or alternative fishing practices that minimize the risk of entanglement or reduce the likelihood that entanglement will result in serious injury or mortality are developed and approved.

EFFECTIVE DATE: This rule is effective from April 1, 1997, through June 30, 1997.

ADDRESSES: Copies of the Environmental Assessment analyzing this action may be obtained from the Chief, Marine Mammal Division, Office of Protected Resources (FPR), NMFS, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, NMFS/Marine Mammal Division/Office of Protected Resources, 301–713–2322; or Kimberly Thounhurst, NMFS/Northeast Regional Office/Protected Species Program, 508–281–9138.

SUPPLEMENTARY INFORMATION:

Need for Emergency Action

With a minimum population estimate of 295 animals, the northern right whale is the most severely depleted large whale species in the Atlantic Ocean. Approximately 37 entanglements of right whales in fishing gear, including fixed and drift gillnets, lobster pot gear, fish traps, weirs, and unidentified gear have been reported. Nine of the above entanglements, eight of which resulted in serious injury or mortality, were attributed to gear identified as lobster gear. The working definition of serious injury used by the Northeast Region is provided in the 1997 List of Fisheries (62 FR 33, January 2, 1997). Pursuant to Section 118(g)(1)(B) of the Marine Mammal Protection Act (MMPA), if the Secretary of Commerce (Secretary) finds that the incidental mortality and serious injury of a marine mammal stock is having, or is likely to have, an immediate and significant adverse impact on that stock or species, and in the case where a take reduction plan (TRP) is being developed, the Secretary shall prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery and approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

In the case of the northern right whale, NMFS has determined, through consultation under the Endangered Species Act (ESA), that the continued existence of the species may be jeopardized by the use of lobster pot gear during the annual high use periods in both the Federal portion of the Cape Cod Bay critical habitat (January 1, 1997, through May 15) and in the Great South Channel critical habitat area (April 1 through June 30). The consultation concluded that the risk of jeopardy could be avoided by closing the Great South Channel critical habitat area during the period of peak whale abundance until gear modifications or alternative fishing practices have been developed which minimize the threat of entanglement or the possibility of serious injury or mortality due to entanglement. The biological opinion also recommended that NMFS work with the Commonwealth of Massachusetts to restrict or modify the lobster fishery in the Cape Cod Bay critical habitat. The conclusion of the biological opinion was based on the following factors: (1) In 20 of the past 27 years, the right whale population has incurred human-induced serious injury or mortality at a rate that continues to limit the species' ability to recover to its optimum sustainable population level, (2) the population remains at a critically low level and experienced an unusually high number of known mortalities in 1996, and (3) right whales have incurred serious injury and mortality incidental to the lobster pot fishery.

Areas designated under the ESA as critical habitat areas for the northern right whale were chosen to encompass areas of concentration for the species (See 50 CFR 226.13). Although individual right whales may transit much of the eastern coast of North America, large numbers of whales are likely to remain in the critical habitat areas throughout the peak months. Peak months include January or February through May in Cape Cod Bay and April through June in the Great South Channel. Identifying high risk times and areas for right whales is somewhat problematic because, although the location for most recorded entanglement events is unknown, entanglements are known to have occurred either at the very end of the peak spring period or at other times of the year. An analysis of fishing effort data indicates that the critical habitat areas do not have significant fishing effort in the peak whale abundance months. Despite low fishing effort levels, NMFS assigns high risk to critical habitat areas during peak

whale abundance months. Even a small amount of fishing effort represents an entanglement risk when numbers of whales in the area are high. Protection for right whales in critical habitat areas during non-peak months is expected to be addressed in the proposed rule for the Atlantic TRP, which is currently being developed.

Pursuant to the 1994 amendments to the MMPA, NMFS established an Atlantic large whale take reduction team (TRT) to recommend measures to reduce the number of serious injuries and mortalities of right, humpback, finback, and minke whales in four East Coast fisheries. Although the TRT did not reach consensus on all issues it did submit a report to NMFS on February 4, 1997, that discusses measures to restrict the lobster fishery in critical habitat. Many of the measures were based on the NMFS biological opinion and on the Commonwealth of Massachusetts right whale conservation plan submitted to the Federal district court for the District of Massachusetts on December 16, 1996, pursuant to a court order in the case of *Strahan* v. *Coxe*. NMFS plans to publish the proposed rule for the TRP by April 1, 1997, and the final plan and implementing regulations by July 15, 1997.

Although these dates represent an expedited schedule, the TRP will not be implemented in time to provide protection for right whales in the critical habitat area during high use periods in 1997. Due to the conclusion in the biological opinion issued under the ESA and the factors upon which that conclusion was based, NMFS has determined that the American lobster pot fishery has the potential to continue to take northern right whales and is therefore likely to have an immediate and significant adverse impact on the northern right whale population. Since the potential immediate and significant adverse impact cannot be addressed by the TRP until July 1997, NMFS is implementing fishing restrictions in critical habitat areas on an emergency basis. The measures contained in the emergency regulations are also being considered within the framework of the proposed rule for the entire Atlantic large whale TRP, which is currently being developed.

Rationale for Gear Restrictions and Closures

The emergency measures are a set of initial measures addressing the immediate need to begin the process of reducing entanglement risk to northern right whales incidental to the lobster pot fishery. These measures include both gear restrictions and closures in portions of right whale critical habitat in Cape Cod Bay and the Great South Channel. Gear restrictions are required only in areas where serious entanglements are less likely to occur, and where it is more probable that, if an entanglement does occur, it will be observed. Restrictions on the use of all lobster pot gear are being required where serious entanglements are more likely to occur and where entanglements are less likely to be observed. For example, the Cape Cod Bay area is closer to shore than the Great South Channel, so entanglements are more likely to be observed and reported in Cape Cod Bay, and it is more likely that a successful disentanglement could be conducted in the Bay than in the Channel. Therefore, certain gear modifications are exempted in the Federal portion of the Cape Cod Bay critical habitat, but no modifications are approved for use in the Great South Channel at this time. The gear modifications exempted by this action for Cape Cod Bay are expected to substantially reduce the risk of entanglement, but NMFS recognized that the risk is not totally eliminated and that a serious injury or mortality in the exempted gear could occur. Therefore, this emergency action also includes a contingency measure, as described below, to close the Federal portion of the Cape Cod Bay critical habitat area in the event of a documented failure of the modified lobster pot gear.

Behavior of right whales and information from actual entanglement records suggest that both vertical buoy lines and groundlines (line connecting pots in a lobster pot trawl) used in lobster pot gear represent entanglement risks and that either part of the gear might be the part initially encountered by the whale. Modifications to the current practices of rigging buoy lines are needed to reduce the number of vertical lines.

Buoy lines are typically constructed of a section of sinking line near the surface, spliced or knotted to a longer section of floating line from there down to the anchor. Sinking line near the surface is preferred to decrease the chance that the line will be severed by propellers of vessels passing through an area. Floating line is less expensive than sinking line and has several additional benefits. For example, using floating line near the bottom can prevent the line from wrapping around the first pot and causing chafing problems with the pot and the bottom. The length of buoy line used can depend on water depth and tidal influence. In some areas the buoy line may be longer than twice the water depth. The tautness of the line is likely influenced by the tidal cycle and other currents. Therefore, the line may be slack during part of the current cycles in certain areas. It is believed that slack floating line represents a greater risk of entanglement than taut line, particularly if the line is laying on the surface. Right whales may be particularly susceptible to entanglement in lines laying at the surface because of the feeding behavior known as ''skim feeding'' during which whales move slowly forward through a patch of zooplankton, keeping the mouth slightly ajar for hours at a time. Right whales are also known to feed at depth; however, the behavior when feeding near the bottom or in the water column is poorly understood. A requirement that buoy line include only sinking line would decrease the potential for line to be slack at the surface or in the water column and thereby reduce the risk of entanglement represented by buoy lines.

The lobster industry uses either sinking or floating groundline, depending on substrate and/or gear densities. Floating line is preferred in many areas to avoid snagging on rocky bottom or on other pots as well as to reduce chafing caused by contact with pots and with the bottom. The degree to which line floats between pots is unknown. Fishers maintain that the groundline is probably taut as the pot trawls are set. The tautness of the line is likely influenced by the tidal cycle and other currents, the length of the trawl, and the speed with which the trawl is set. If trawls are shifted by currents, groundlines may have a higher profile after the gear has been soaking through several tidal/current cycles. In addition, right whales are known to feed close enough to the bottom in certain areas that mud is still present on the heads after surfacing. Therefore, even a modest curve to the groundline could still represent an entanglement threat, particularly since the length of groundline between pots may be as long as the depth of the water column. The requirement of sinking groundline would reduce the potential for a high profile of the groundline and, therefore, reduce the entanglement threat represented by that part of the pot trawl.

Cape Cod Bay: The Commonwealth of Massachusetts established an Endangered Whale Working Group (EWWG) and developed measures to protect right whales in the portion of Cape Cod Bay critical habitat area located in Commonwealth waters. The EWWG recommended several gear modifications to reduce the threat of right whale entanglement in lobster pot gear in the Cape Cod Bay critical

habitat, and these measures were also discussed by the TRT. Oceanographic conditions were also taken into account. The measures recommended by the EWWG for critical habitat during the January 1 through May 15 period included prohibitions on floating buoy line and floating groundline, prohibition on use of single pots (i.e., a mandated use of multiple-pot trawls) to reduce the number of vertical lines, and an eventual requirement of a breakaway buoy or weak buoy line, when developed. NMFS has reviewed these measures and has determined that, in general, they represent a reasonable approach to reduce the risk that right whales will be seriously injured or sustain mortality as a result of entanglements in lobster gear. Consequently, NMFS is not duplicating those measures applicable to State waters in this emergency rule. However, there is a small portion of the Cape Cod Bay critical habitat area that is outside of Commonwealth waters. NMFS' emergency measures for the federal water portion of Cape Cod Bay critical habitat are largely based on the measures developed by Massachusetts. This rule requires the removal of all lobster pots from the waters of the Cape Cod Bay critical habitat area through May 15, 1997, unless the gear is exempt. Exempt gear consists of trawls of two or more pots; trawls of less than four pots may use only one vertical line and trawls of four or more pots may use no more than two vertical lines. All buoy lines and groundlines must be sinking lines. NMFS believes these measures will reduce the risk of entanglement and/or serious injury or mortality due to entanglement in buoy lines and groundlines in this area.

The TRT recommended the use of breakaway buoys or weak buoy lines to reduce the potential for a whale to become wrapped in the buoy line and sustain serious injury or mortality from either the buoy line itself or from dragging the whole lobster pot trawl. It is believed that these measures would be more effective at reducing the risk associated with buoy lines than the measures imposed by this emergency action. However, since breakaway buoys and weak buoy lines have not yet been developed, these measures cannot be required at this time. Therefore, despite the implementation of the measures required by this emergency action in Federal waters and by the Commonwealth of Massachusetts in its waters, some risk of serious injury or mortality due to entanglement in buoy lines remains. Thus, a provision is included in this emergency action that would allow the Assistant Administrator of Fisheries, NOAA (AA) to close, through notification in the **Federal Register**, the Cape Cod Bay critical habitat area, including both the Federal and Commonwealth portions, from January 1 through May 15 if a right whale sustains serious injury or mortality that is conclusively attributed to lobster pot gear that is exempted by NMFS or allowed by the Commonwealth. The AA may reopen the area through notification in the **Federal Register** once alternative gear modifications or fishing practices are approved.

Great South Channel: The Great South Channel critical habitat area, which is located entirely in federal waters, is further from shore than the Cape Cod Bay area. Therefore, entanglements are less likely to be observed, and successful disentanglement is less likely due to logistical constraints. In addition, differences in oceanographic conditions in the two regions may make a particular gear modification less effective in one area relative to the other. NMFS is currently working with the Commonwealth of Massachusetts to establish a gear modification advisory and technical review group. This group will be asked to consider oceanographic conditions in the Great South Channel in recommending gear modifications that might be effective and practicable in that area. Because the gear measures required by this rule for Cape Cod Bay have not been reviewed in the context of oceanographic conditions in the Great South Channel, NMFS believes that similar measures may not provide sufficient protection for right whales in that area. Consequently, NMFS is imposing a closure of the Great South Channel critical habitat area from April 1, 1997 through June 30, 1997. However, this action includes a provision for exemptions to this closure once gear modifications or alternative fishing practices are developed and approved by the AA. Once a determination has been made that the gear modifications or alternative fishing practices provide adequate protection for right whales from the risk of entanglement and/or serious injury or mortality due to entanglement, these gear modifications or alternative fishing practices will be approved through a notification action in the **Federal Register**.

In consideration of the possibility that gear modifications may be approved by this season and gear with such modifications exempted from the closure at some point during the April through June period, this emergency action also contains a contingency similar to that for Cape Cod Bay that would allow the AA to again close the area through notification in the **Federal Register** if a right whale sustains serious injury or mortality that is conclusively attributed to lobster pot gear exempted by NMFS.

Classification

In accordance with Section 118(g) of the MMPA, NMFS has determined that this rule is necessary to respond to the potential for immediate and significant adverse impact to the northern right whale population incidental to the prosecution of the American lobster pot fishery.

The AA also finds for good cause that the reasons justifying implementation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide additional notice and opportunity for public comment.

Similarly, the AA is waiving the 30-day delay in the effective date otherwise required under 5 U.S.C. 553(d).

Because notice and opportunity for comment is not required by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603 and 604, preparation of a regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 1, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Effective from April 1, 1997, through June 30, 1997, in § 229.2, the definitions for ''American lobster or lobster'', ''Groundline'', ''Lobster pot trawl'', ''Pot'', and ''Sinking line'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

American lobster or *lobster* means the species *Homarus americanus.*

* * * * *

Groundline means the line connecting pots on a pot trawl.

* * * * *

Lobster pot trawl means two or more lobster pots, all attached to a groundline.

* * * * *

Pot means any trap, structure, or other device that is placed on the ocean bottom and is designed to catch or is capable of catching lobsters.

* * * * *

Sinking line means line that will sink and will not float at any point in the water column.

* * * * *

3. Effective from April 1, 1997, through June 30, 1997, in § 229.3, paragraphs (g) and (h) are added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(g) It is prohibited to fail to remove all lobster pot gear from the water, or to use, set, haul back, or fish with, lobster pot gear in the Cape Cod Bay Critical Habitat Restricted Lobster Gear Area as specified in § 229.30(a), unless such gear meets the requirements and conditions specified in § 229.30(a)(3).

(h) It is prohibited to fail to remove all lobster pot gear from the water, or to use, set, haul back, or fish with, lobster pot gear in the Great South Channel Critical Habitat Restricted Lobster Pot Gear Area as specified in § 229.30(b), unless otherwise allowed under § 229.30(b)(3).

4. Effective from April 1, 1997, through June 30, 1997, a new § 229.30 is added to Subpart C to read as follows:

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.30 Lobster pot restrictions to prevent right whale takes.

(a) *Cape Cod Bay Critical Habitat Area Lobster Pot Gear Restrictions*—(1) *General.* From April 1, 1997, through May 15, 1997, all persons must remove all of their lobster pot gear from the water, and may not use, set, haul back, or fish with, lobster pot gear, with the exception of gear that is exempt under paragraph (a)(3) of this section, in the area specified in paragraph (a)(2) of this section.

(2) *Cape Cod Bay Critical Habitat Restricted Lobster Pot Gear Area.* (i) The restrictions and requirements specified in paragraph (a)(1) of this section apply to the Cape Cod Bay Critical Habitat Restricted Lobster Gear Area (Copies of a chart depicting this area are available from the Regional Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated:

CAPE COD BAY CRITICAL HABITAT RESTRICTED LOBSTER GEAR AREA

Point	N. Latitude	W. Longitude
CCB1	42°12′N	70°30′W,
CCB2	42°12′N	70°15′W,
CCB3	42°08′N	70°12.4′W,
then westerly along the 3 nm state boundary to		
CCB4	42°08′N	70°30′W,
then due north to CCB1.		

(3) *Cape Cod Bay Critical Habitat Area Lobster Pot Gear Exemption Requirements.* (i) Lobster pot gear that meets the following requirements and conditions is exempted from the restrictions specified in paragraph (a) of this section:

(A) The gear is a lobster pot trawl.

(B) No more than one vertical line is used if the lobster pot trawl consists of fewer than four lobster pots.

(C) No more than two vertical lines are used if the lobster pot trawl consists of four or more lobster pots.

(D) All groundlines and buoy lines consist of sinking line. Polypropylene line is not sinking line unless it contains a lead core.

(ii) The Assistant Administrator may revise the requirements and conditions specified in paragraph (a)(3)(i) of this section or impose additional requirements and conditions and/or exempt specified alternative fishing practices by publishing the requirements, conditions, or alternatives in the **Federal Register**.

(4) *Additional measures for the protection of right whales.* (i) If a serious injury or mortality of a northern right whale occurs in the Cape Cod Bay critical habitat area specified under 50 CFR 229.13(b) during the time specified in paragraph (a)(1) of this section, and is conclusively attributed to lobster pot gear exempt under paragraph (a)(3)(i) of this section or allowed by the Commonwealth of Massachusetts in Commonwealth waters, the area shall be closed for the period specified in paragraph (a)(1) of this section through notification in the **Federal Register** until such time as the Assistant Administrator revises the requirements and conditions specified in paragraph (a)(3)(i) of this section or imposes additional requirements and conditions, or exempts specified alternative fishing practices in accordance with paragraph (a)(3)(ii) of this section.

(ii) If a serious injury or mortality of any endangered whale occurs in any area and at any time and is conclusively attributed to gear exempt under paragraph (a)(3)(i) or allowed by the Commonwealth of Massachusetts in Commonwealth waters, NMFS will reassess its exemption of the gear and may close the Cape Cod Bay critical habitat area to all lobster pot fishing through notification in the **Federal Register** until such time as the Assistant Administrator revises the requirements and conditions specified in paragraph (a)(3)(i) of this section or imposes additional requirements and conditions, or exempts specified alternative fishing practices in accordance with paragraph (a)(3)(ii) of this section.

(b) *Great South Channel Critical Habitat Area Lobster Pot Gear Restrictions*—(1) *General.* From April 1, 1997 through June 30, 1997, all persons must remove all of their lobster pot gear from the water, and may not use, set, haul back, or fish with, lobster pot gear in the area specified in paragraph (b)(2) of this section, unless the Assistant Administrator exempts such gear under paragraph (b)(3) of this section.

(2) *Great South Channel Critical Habitat Area Restricted Lobster Pot Gear Area.* The restrictions on use of lobster pot gear specified in paragraph (b)(1) of this section apply to the Great South Channel Critical Habitat (copies of a chart depicting this area are available from the Assistant Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated:

GREAT SOUTH CHANNEL CRITICAL HABITAT CLOSURE AREA

Point	N. Latitude	W. Longitude
GSC1	41°00′ N	69°05′ W,
GSC2	41°40′ N	69°45′ W,
GSC3	42°10′ N	68°31′ W, and
GSC4	41°38′ N	68°13′ W.

(3) *Exemptions for Lobster pot gear or alternative fishing practices authorized by the Assistant Administrator.* The Assistant Administrator may exempt lobster pot gear or specified fishing practices from the restrictions and requirements specified in paragraph (b)(1) of this section by publishing the requirements and conditions such gear must meet or the alternative fishing practices in the **Federal Register**.

(4) *Additional measures for the protection of right whales.* (i) If a serious injury or mortality of a northern right whale occurs in the area and during the time specified in paragraphs (b)(1) and

(b)(2) of this section, and is conclusively attributed to lobster pot gear that has been exempted under paragraph (b)(3) of this section, the area in paragraph (b)(2) of this section shall be closed for the period specified in paragraph (b)(1) of this section through notification in the **Federal Register** until such time as the Assistant Administrator revises the requirements and conditions, or imposes additional requirements and conditions, or exempts specified alternative fishing practices in accordance with paragraph (b)(3) of this section.

(ii) If a serious injury or mortality of any endangered whale occurs in any area and at any time and is conclusively attributed to gear which is exempt under paragraph (b)(3) of this section, NMFS will reassess its exemption of the gear and may close the area to all lobster pot fishing through notification in the **Federal Register** until such time as the Assistant Administrator revises the requirements and conditions, or imposes additional requirements and conditions, or exempts specified alternative fishing practices in accordance with paragraph (b)(3) of this section.

[FR Doc. 97–8727 Filed 4–1–97; 4:31 pm]
BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 033197A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for the yellowfin sole fishery by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl yellowfin sole fishery category in the BSAI.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal apportionment of the 1997 halibut bycatch allowance specified for the trawl yellowfin sole fishery in the BSAI, which is defined at § 679.21(e)(3)(iv)(B)(*1*), was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 210 mt. Directed fishing for yellowfin sole by vessels using trawl gear in the BSAI was prohibited on March 22, 1997 (62 FR 14651, March 27, 1997) to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to that fishery.

The Administrator, Alaska Region, NMFS, has determined that as of March 22, 1997, 14 metric tons of halibut mortality remain in the first seasonal bycatch allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. The second seasonal bycatch allowance (210 mt) of Pacific halibut apportioned to the trawl yellowfin sole fishery category in the BSAI becomes available on April 1.

All other closures remain in full force and effect.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–8565 Filed 3–31–97; 4:29 pm]
BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 032897B]

Fisheries of the Exclusive Economic Zone Off Alaska, Pollock in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of pollock in the Eastern Regulatory Area in the Gulf of Alaska (GOA). NMFS is requiring that catches of pollock in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the pollock 1997 total allowable catch (TAC) in this area has been reached.

EFFECTIVE DATE: Effective 1200 hrs, Alaska local time (A.l.t.), March 31, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1997 TAC of pollock in the Eastern Regulatory Area of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 5,580 metric tons (mt), determined in accordance with § 679.20 (c)(3)(ii).

In accordance with § 679.20 (d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 TAC for pollock in the Eastern Regulatory Area has been reached. Therefore, the Regional Administrator is requiring that further catches of pollock in the Eastern Regulatory Area be treated as prohibited species in accordance with § 679.21 (b).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–8566 Filed 3–31–97; 4:29 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 65
Friday, April 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require modification of the hydraulic system, and a revision to the Airplane Flight Manual (AFM) to include revised procedures for lowering the landing gear. This proposal is prompted by a report of uncommanded application of the brakes when the direct current (DC) hydraulic pump was selected ON with the main hydraulic system operative; this situation was caused by build-up of back pressure in the brake supply and hydraulic return systems. The actions specified by the proposed AD are intended to prevent uncommanded application of the brakes during landing, as a result of the build-up of back pressure.

DATES: Comments must be received by May 15, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–178–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–178-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that it has received a report of uncommanded application of the brakes when the direct current (DC) hydraulic pump of the auxiliary hydraulic system was selected ON with the main hydraulic system operative. The cause has been attributed to the build-up of back pressure in the brake supply and hydraulic return systems, as a result of installation of Jetstream Modification 10303A. (The existing design of Modification 10303A does not account for the fact that the auxiliary hydraulic system may be operated while the main hydraulic system is operating.) Build-up of back pressure in the brake supply and hydraulic return systems, if not corrected, could result in uncommanded application of the brakes during landing.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin ATP–29–12, dated September 9, 1995, which describes procedures for revisions to the Emergency and Abnormal Procedures Sections of the Airplane Flight Manual (AFM) to include revised procedures for lowering the landing gear. (Paragraph 1.K. of the service bulletin references Temporary Revision No. T/52 as an additional source of service information for revising the AFM. This particular Temporary Revision applies to airplanes of U.S. registry.)

The service bulletin also describes procedures for modification of the hydraulic system. The modification involves:

1. Connecting the auxiliary hydraulic reservoir feed to the main hydraulic return system, thus eliminating the need for a check valve (HTE 510013) and its associated piping;
2. Connecting the existing feed line of the auxiliary reservoir directly to the pressure bleed line of the brake master cylinder;
3. Installing a non-return valve between the change-over isolation valve and the main pressure manifold; and
4. Removing the bypass pipeline of the landing gear. Accomplishment of the modification will prevent

uncommanded application of the brakes during landing when the DC hydraulic pump is selected ON with the main hydraulic system operative.

The CAA classified this service bulletin as mandatory and issued British airworthiness directive 001–09–095, dated September 1995, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the hydraulic system. The proposed AD also would require revisions to the Emergency and Abnormal Procedures Sections of the FAA-approved AFM to include revised procedures for lowering the landing gear. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 10 Jetstream Model ATP 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 modification, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $15,000, or $1,500 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revisions proposed by this AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13—[Amended]

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

Jetstream Aircraft Limited: Docket 96–NM–178–AD.

Applicability: Model ATP airplanes, having constructor's numbers 2002 through 2063 inclusive; on which Jetstream Modification 10303A (Jetstream Service Bulletin ATP 32–41) has been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded application of the brakes during landing, accomplish the following:

(a) Within 60 days of the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Service Bulletin ATP–29–12, dated September 9, 1995.

(1) Modify the hydraulic system; and

(2) Revise the Emergency and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Temporary Revision No. T/52, Issue 1, dated August 16, 1995, which introduces revised procedures for lowering the landing gear, as specified in the temporary revision; and operate the airplane in accordance with those limitations and procedures.

Note 2: Paragraph 1.K. of Jetstream Service Bulletin ATP–29–12, dated September 9, 1995, references Temporary Revision No. T/52 as an additional source of service information for revising the AFM.

Note 3: This may be accomplished by inserting a copy of Temporary Revision No. T/52 in the AFM. When this temporary revision has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision No. T/52.

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

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

can be accomplished. Issued in Renton, Washington, on March 31, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–8700 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 97–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 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 Boeing Model 777–200 series airplanes. This proposal would require replacement of certain overhead electronics units (OEU) of the passenger address and entertainment communication systems with modified OEU's. This proposal is prompted by reports of smoke coming from the overhead panels near the passenger reading lights, which was caused by overheating of the transformers located in the OEU's. The actions specified by the proposed AD are intended to prevent overheating of the transformers, which potentially could cause a fire in the transformer assembly and/or electronic components located in the OEU and could cause smoke to enter the passenger cabin.

DATES: Comments must be received by May 15, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–55–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Peter Skaves, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2795; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–55–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. 97–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of smoke coming from the overhead panel near the passenger reading lights on Boeing Model 777–200 series airplanes. In other reports, the overhead electronics units (OEU) failed to supply power to the lights of the passenger cabin. Investigation revealed that the transformers of the OEU's are not adequately protected from certain overload failure modes, which causes the transformers to overheat. Overheating of a transformer, if not corrected, potentially could cause a fire in the transformer assembly and/or electronic components located in the OEU and could cause smoke to enter the passenger cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–23A0027, dated February 13, 1997. The alert service bulletin describes procedures for replacement of OEU's, part numbers (P/N) 285W0029–3, 285W0029–3 MOD A, and 285W0029–3 MOD B, of the passenger address and entertainment communication systems with modified OEU's, P/N's 285W0029–5, 285W0029–5 MOD A, and 285W0029–5 MOD B. The modified OEU's contain a new transformer assembly that contains circuit protection for overload conditions, which will prevent the transformer from overheating.

The FAA also has reviewed and approved Boeing Component Service Bulletin 285W0029–23–01, dated February 13, 1997, which describes procedures for reworking OEU's having P/N's 285W0029–3, 285W0029–3 MOD A, and 285W0029–3 MOD B. The rework includes replacing the transformer assembly located in the OEU with a new OEU, applying dash number -5, and adding a MOD level marking (if applicable) to the nameplate of the OEU.

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 replacement of certain OEU's of the passenger address and entertainment communication systems with modified OEU's. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 46 Boeing Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 209 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $200,640, or $12,540 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:

BOEING: Docket 97–NM–55–AD.

Applicability: Model 777–200 series airplanes, as listed in Boeing Alert Service Bulletin 777–23A0027, dated February 13, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the transformers of the overhead electronic units (OEU), which potentially could cause a fire in the transformer assembly and/or other electronic components of the OEU and could cause smoke to enter the passenger cabin, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace OEU's having part numbers (P/N) 285W0029–3, 285W0029–3 MOD A, and 285W0029–3 MOD B, of the passenger address and entertainment communication systems with modified OEU's having P/N's 285W0029–5, 285W0029–5 MOD A, and 285W0029–5 MOD B, in accordance with Boeing Alert Service Bulletin 777–23A0027, dated February 13, 1997.

Note 2: Boeing Component Service Bulletin 285W0029–23–01, dated February 13, 1997, describes procedures for reworking OEU's having P/N's 285W0029–3, 285W0029–3 MOD A, and 285W0029–3 MOD B, to a configuration having a dash number –5, and a MOD level marking (if applicable).

(b) As of the effective date of this AD, no person shall install an OEU having P/N 285W0029–3, 285W0029–3 MOD A, or 285W0029–3 MOD B, on any airplane.

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

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

Issued in Renton, Washington, on March 31, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification 026Service.

[FR Doc. 97–8701 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 243

RIN 1010–AC08

Policy for Release of Third-Party Proprietary Information for the Administrative Appeals Process and for Alternative Dispute Resolution

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its regulations to authorize MMS by law to provide third-party proprietary information to appellants and entities involved in administrative appeals and other Alternative Dispute Resolution (ADR) when that information is the basis for an MMS assessment.

Presently, MMS cannot release third-party commercial or financial information (proprietary information) because release would violate the Trade Secrets Act which prohibits releasing proprietary information ''except as provided by law.'' This regulation will provide the authority by law to release the information. MMS' proposed rule would require that those receiving relevant proprietary information sign confidentiality and liability agreements before the agency releases the information.

DATES: Comments must be received on or before June 3, 1997.

ADDRESSES: Comments should be sent to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165, courier delivery to Building 85, Denver Federal Center, Denver, Colorado, 80225; or e-Mail David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, Fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Colette Haines, Gregory Kann, Donna Luna, Cecelia Williams, and Sammy Wilson, MMS, and Howard Chalker, Office of the Solicitor.

I. General

Appellants sometimes request information MMS used to assess additional royalties. MMS presently

processes requests for such information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which authorizes MMS to withhold proprietary information. Exemption 4 of FOIA protects ''trade secrets and commercial or financial information obtained from a party and privileged or confidential.'' It protects submitters of proprietary information and other parties associated with such information from the competitive disadvantages of public disclosure.

MMS follows Exemption 4 of FOIA to determine if certain types of information fall within the scope of the Trade Secrets Act, since Exemption 4 and the Act are coextensive. *CNA Fin. Corp.* v. *Donovan*, 830 F.2d 1132, 1144–52 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 977 (1988). Such business-related information as sales prices or values that producers or purchasers submit to MMS is commercial or financial information.

Information is privileged or confidential if it meets one of two tests:

(1) The submitter voluntarily submits the information to the Department but would not customarily release the information to the public;

(2) MMS requires the submitter to provide the information and release of that information could cause harm to the competitive position of the submitter. *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 879, 880 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

MMS believes that commercial or financial information less than 6 years old concerning the volume and value of the produced substance falls into these categories. While MMS does not believe that the release of either volume or value information alone would cause competitive harm, it seeks input on this issue through this rulemaking.

The requirement to submit such information rests on the lessee or its agent, such as an operator. When a purchaser voluntarily submits royalty information to MMS on behalf of a lessee, MMS evaluates the harm to the lessee and/or its agent as well as the purchaser.

Executive Order 12600 and the Department of the Interior's regulations implementing Exemption 4 require an agency to notify the submitter prior to releasing propriety information (43 CFR 2.15(d)). If the submitter provides valid objection to release, MMS must redact (delete) or otherwise withhold proprietary information before releasing the requested material.

There are numerous ways in which MMS uses third-party proprietary information in assessing additional royalties. For example, gas plant audits rely on proprietary information that third parties furnish. MMS understands that many submitters believe that release of this information could cause competitive harm to them.

Another example is an assessment based on major portion analysis, where MMS determines the highest price paid or offered for a major portion of oil or gas produced from a single field or area. Third parties, including lessees, operators, and purchasers, submit such information to MMS. The release of combinations of information, such as volume and value, could cause competitive harm to those third parties.

The Trade Secrets Act (Act), 18 U.S.C. 1905, prohibits MMS from releasing such information except as provided by law. The Act provides penalties of up to 1 year in jail, a $1,000 fine, and mandatory removal from the job for a Federal employee who discloses proprietary information without authorization.

However, the Act's prohibition on release is not absolute. Substantive regulations provide authorization for release. *Chrysler* v. *Brown*, 441 U.S. 281 (1979). This proposed rule would permit MMS to release third-party proprietary information to those appealing or attempting to settle assessments based on that information. This section does not address MMS' release of any other type of information.

Under the proposed regulation, MMS would inform the recipient of an assessment based on third-party commercial or financial information (proprietary information) that such information is available if the party signs confidentiality and liability agreements. These agreements would require that the recipient use the proprietary information only for reviewing and appealing or settling an MMS order. Also, the proprietary information would be available only to those individuals actually working on the appeal or a related ADR.

The agreements would require that the recipient accept all liability for wrongful disclosure. Further, at its discretion, MMS could require for good cause that the recipient of proprietary information meet more stringent standards than normally required.

The recipient of an MMS order has the right to appeal the order to the MMS Director, or to the Deputy Commissioner of Indian Affairs if the order relates to an Indian lease. MMS' proposed rule would require the appellant to request access to proprietary information before the expiration of the appellant's time to file a statement of reasons under 30 CFR Part 290.

MMS has determined that requiring the appellant to make its request early in the appeals process works best. For example, if an appellant were to request documents while MMS was preparing the Director's Decision, the agency would have to stop work on the decision to process the request. This would be a particular problem because of the 33-month limit for the Department to decide appeals imposed in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Additionally, if MMS were to furnish information immediately before the MMS Director issued a decision, the information would be useless because the appellant would not have time to use the information. Because the MMS order at issue would have notified the appellant that such information was available, there would be no reason to delay the appeals process simply because an appellant failed to promptly request information.

Under the proposed regulations, MMS would not release proprietary information after the expiration of appellant's time to file a statement of reasons under 30 CFR Part 290, except to facilitate ADR. MMS could release such information at any time during ADR under the terms of the proposed regulations.

Because judicial review of final agency action is limited to the administrative record, MMS could not provide a requestor with proprietary information after final agency action.

This rulemaking applies only to the disposition of relevant third-party proprietary information. It does not grant any rights to appellants to obtain admissions, depositions, or responses to interrogatories.

MMS specifically requests your comments, including rationale, on the following issues:

1. What type of information is proprietary? For how long after such information is generated does it remain proprietary? For example, when is the proprietary information no longer of value to the competition? Describe the competitive harm that release of this information would cause. Please be mineral specific. Identify the data elements on specific MMS forms that you would consider proprietary either on their own or in combination with other data elements. Does the release of either volume or value information without the other cause competitive harm?

MMS seeks mineral-specific comments because we believe that the release of information regarding one mineral may cause more competitive harm than for another. For example,

there is usually only one owner/operator/payor per coal mine or lease, as opposed to multiple such entities for an oil and gas lease. Therefore, MMS believes that release of coal production and royalty data is more likely to cause competitive harm than release of similar information on oil and gas. Further, because many coal contracts are long-term contracts, such information on coal may remain proprietary longer than for oil and gas.

2. When there is an appeal of an MMS order or ADR, should MMS release relevant proprietary information if the requester signs confidentiality and liability agreements?

3. Should MMS notify the submitters that the proprietary information has been requested?

4. Are the proposed safeguards of this rulemaking adequate to protect the submitter's interest? Are there additional safeguards that MMS should include in this rule?

5. Should this rule include release of relevant proprietary information needed to file appeals with the MMS Director or defend against civil penalties under 30 CFR Parts 241 or 251?

6. Should MMS restrict the proposed list of people allowed to review the relevant proprietary information further than the proposed rule requires?

7. Should MMS charge fees for the relevant proprietary information based on the fee schedule used for FOIA requests at 43 CFR Part 2?

As an aid to public participation in this rulemaking, comments received will be posted on the Internet at http://www.rmp.mms.gov.

II. Section-by-Section Analysis

Section 243.10 Definitions.

All proposed definitions in this section are self-explanatory.

Section 243.11 When must I request relevant third-party proprietary information?

The paragraphs in this part would provide time frames for filing a timely request for relevant third-party proprietary information. You would be required to file a request after you file a timely notice of appeal under 30 CFR 290.3(a)(1). You would submit a request after you file a timely notice but before the expiration of the time for filing a statement of reasons or anytime during ADR with MMS.

MMS would inform you when your order is based on third-party proprietary information and advise you of the request procedures under 30 CFR 243.12.

Section 243.12 How do I request relevant proprietary information?

This section would provide the procedures for requesting relevant proprietary information as well as the address of the MMS FOIA Officer.

Section 243.13 May MMS deny my request for relevant proprietary information?

This section would provide that the Associate Director for Royalty Management (AD/RM) can deny your request for relevant proprietary information for good cause. The AD/RM would deny your request if the information requested was not used in the order being challenged, or if it receives a request after the time frames outlined in § 243.11. The AD/RM could also deny the request if you have breached a previous confidentiality or liability agreement.

Section 243.14 May I appeal MMS's denial of my request for relevant proprietary information?

Paragraph (a) would provide that you could appeal MMS's denial of a request for relevant proprietary information as part of your appeal on the merits under 30 CFR Part 290 to the MMS Director or the Deputy Commissioner of Indian Affairs.

Paragraph (b) would provide that you could not appeal a denial of a request for relevant proprietary information while you are in ADR.

Section 243.15 What must I do before MMS will give me the relevant proprietary information?

Under the proposed regulation, you must sign confidentiality and liability agreements before MMS will provide relevant documents.

Paragraph (a) would require that your organization's Chief Operating Officer or equivalent sign the confidentiality and liability agreements. It would also require that the signing official have the authority to execute the agreement. These agreements must be notarized.

Paragraph (b) would require that under the confidentiality and liability agreements you must agree to accept all liability of any kind for wrongful disclosure or misuse of the proprietary information. Such liability includes, but is not limited to, liability to the Department; to the third party providing the information to MMS; and to the applicable lessee(s), lessor(s), and operator(s).

For example, assume that, on a lessee's behalf, a purchaser of oil and gas from a Federal or Indian lease submitted proprietary information to MMS, who in turn provided that information to an appellant under this section. The appellant would be responsible for any and all damages to the lessee, lessor, and purchaser for any violation of the confidentiality or liability agreements which caused harm to the competitive position of these parties. This would be true whether the lessee, lessor, or purchaser sought such damages from MMS or the appellant.

Paragraph (c) would require you to submit new confidentiality and liability agreements for each appeal unless MMS determines that the appeal can be covered by an existing agreement. MMS could determine that previous confidentiality and liability agreements for an appeal may cover a subsequent ADR.

Section 243.16 Do I pay a fee for the relevant proprietary information?

This section would require you to pay the billed amount that MMS charges you for producing the relevant proprietary information. For example, the MMS general administrative costs would include researching, copying, and producing data on magnetic tapes and computer disks, among other items. MMS would base these costs on the FOIA fees charged under 43 CFR Part 2. The bill would accompany the relevant proprietary information.

Section 243.17 What are my obligations and restrictions in using the relevant third-party proprietary information MMS provides?

This section would prohibit you from using third-party proprietary information to gain a competitive advantage over the submitter or other parties associated with the data, and to cause any other harm to the competitive position of the submitter.

Paragraph (a) would provide that you may use the proprietary information only to evaluate and challenge the relevant order.

Paragraph (b) would restrict access to the proprietary information to the specific individuals listed in this paragraph.

Paragraph (c) would require that those parties reviewing the proprietary information sign a certification statement attesting that they have read the confidentiality and liability agreements and that they agree to be bound by them.

Paragraph (d) would require you to maintain all certification statements and make them available to MMS upon request.

Paragraph (e) would require that you provide all certification statements to the MMS FOIA Officer within 30 days after:

(1) the Department issues a final nonappealable decision, or

(2) you and MMS conclude ADR with a final agreement, or

(3) you withdraw the appeal or request for ADR.

Paragraph (f) would require you to identify any third-party proprietary information if you use the relevant proprietary information in an appeal or during ADR.

Paragraph (g) would require that you return the documents as outlined in § 243.20.

Paragraph (h) would require you to be bound by the minimum confidentiality requirements under this regulation whether or not they are set forth in the confidentiality agreement.

Section 243.18 May MMS require me to meet more stringent confidentiality standards than those minimum requirements under this regulation?

This section would advise you that for good cause MMS could hold you to more stringent standards and explain in writing why they are necessary. One example of good cause would be an appellant's failure to comply with previous confidentiality and/or liability agreements.

MMS might also determine that in some cases the company officials directly involved in the appeal would also be involved in that company's day-to-day decision making. Their access to third-party proprietary information could cause competitive harm to the submitter of, or other parties associated with, that information. In these cases, MMS could limit review of proprietary information to outside counsel or consultants.

Section 243.19 Am I relieved of the confidentiality and/or liability agreements and all liability after the appeal process or the ADR process is over?

This section would advise that you must always comply with the terms of the confidentiality and liability agreements even after:

(1) the Department issues a final nonappealable decision, or

(2) you and MMS conclude ADR with a final agreement, or

(3) you withdraw the appeal or request for ADR.

You will continue to be liable for any damage resulting from your wrongful disclosure of the proprietary information.

Section 243.20 What do I do with the relevant proprietary information after the appeal process or the ADR process is over?

This section would advise you of the proper disposition of the relevant proprietary information.

Section 243.21 What happens if I don't return the relevant proprietary information?

This section would require appropriate sanctions if you fail to return the relevant proprietary information.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). The proposed rule will provide the authorization by law for MMS to provide appellants with documents furnished by third parties and which contain proprietary information that MMS used to calculate an order.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Executive Order 12866

This proposed rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

The Department has certified to OMB that this rule meets the applicable reform standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and contains no reporting and information collection requirements.

Unfunded Mandate Reform Act of 1995

The Department has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, Tribal, State governments or the private sector.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: March 27, 1997.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, we propose to amend 30 CFR Part 243 by adding the following:

PART 243—APPEALS—ROYALTY MANAGEMENT PROGRAM

Subpart B—Release of Relevant Third-Party Proprietary Information

1. The authority citation for part 243 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

2. Subpart B is added to read as follows:

Subpart B—Release of Relevant Proprietary Third-Party Information

Sec.

§ 243.10 Definitions.

Alternative dispute resolution means using methods other than litigation to settle disputes. These methods may include mediation, arbitration, settlement negotiation, minitrials, conciliation, fact finding, and facilitation.

Appellant means a person with an administrative appeal of an order from the Minerals Management Service, pending under 30 CFR 290 or 30 CFR 241.51(a)(4). For purposes of this subpart only, an appellant also includes a person involved in alternative dispute resolution (ADR) with MMS.

Proprietary information means commercial or financial information obtained from a third party and privileged or confidential.

Relevant proprietary information means any proprietary information a third party furnished and that MMS used to issue and support an order. If MMS did not rely on the information for the challenged order, then it is not relevant proprietary information. Public information is not relevant proprietary information.

Third-party means any party other than the appellant or the Department.

You means the person requesting the information and the employer.

§ 243.11 When must I request relevant proprietary information?

(a) You may obtain relevant proprietary information when MMS informs you that an order you received is based on such information, advises you of the request procedures under 30 CFR 243.12, and receives your timely request for such information. You may obtain relevant proprietary information only at the time provided in this section.

(b) If you timely appeal an MMS order under 30 CFR 241.51(a)(4) or 30 CFR 290, you may timely request relevant proprietary information from MMS until the expiration of the time to file your statement of reasons.

(c) If you are in ADR, you may request relevant proprietary information until a final settlement is reached or ADR is terminated.

§ 243.12 How do I request relevant proprietary information?

(a) You must send a written request for relevant proprietary information to: Minerals Management Service, Royalty Management Program, Freedom of Information Act Officer, Re: Request for Relevant Proprietary Information, P.O. Box 25165 MS 3062, Denver, Colorado 80225–0165.

Overnight courier address: Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, Denver, Colorado 80225.

(b) In your request:

(1) Identify the relevant proprietary information you are requesting; and

(2) Include the MMS Appeal Docket Number (if available); and

(3) Identify any existing confidentiality and liability agreements you have under this part and advise if they are related to this request.

§ 243.13 May MMS deny my request for relevant proprietary information?

The Associate Director for Royalty Management (AD/RM) will deny your request if the requested information is not relevant proprietary information or if the request is received after the timeframes outlined in § 243.11. The AD/RM also may deny the request if you have breached a previous confidentiality or liability agreement or for other good cause.

§ 243.14 May I appeal MMS's denial of my request for relevant proprietary information?

(a) Except as provided in paragraph (b) of this section, if MMS denies your request for relevant proprietary information, you may appeal that denial as part of your appeal on the merits under 30 CFR part 290. If MMS denies your request in whole or in part after the date your statement of reasons is due in your appeal, you may file a supplemental statement of reasons. You must file this supplement within 60 days after you receive notice that MMS denies your request.

(b) You cannot appeal a denial for a request for relevant proprietary information during ADR.

§ 243.15 What must I do before MMS will give me the relevant proprietary information?

(a) Your organization's Chief Operating Officer or equivalent official must sign the MMS confidentiality and liability agreements. In the agreements, the signing official also must attest to having the authority to sign them. These agreements must be notarized.

(b) You must agree under the confidentiality and liability agreements to accept all liability of any kind for wrongful disclosure or misuse of the proprietary information. Such liability includes, but is not limited to, liability to the Department, or the Indian lessor, the third party providing the proprietary information, and the applicable lessee(s) and operator(s).

(c) You must submit new confidentiality and liability agreements for each appeal or ADR unless MMS determines that existing agreements cover the appeal or ADR. For example, if you obtained relevant proprietary information through the appeals process, some or all provisions of your original confidentiality and liability agreements may cover a subsequent ADR.

§ 243.16 Do I pay a fee for the relevant proprietary information?

You must pay the amount MMS charges you for the administrative cost of providing the relevant proprietary information. The charges are based on the fees used for Freedom of Information Act (FOIA) requests at 43 CFR Part 2. MMS will send you the bill with the relevant proprietary information.

§ 243.17 What are my obligations and restrictions in using the relevant proprietary information MMS provides?

(a) You may use relevant proprietary information only for evaluating and challenging the relevant order.

(b) Only the following persons may review the relevant proprietary information:

(1) Your counsel and persons directly assisting your counsel in preparing the relevant appeal or associated ADR; and

(2) Those persons in your employ directly preparing the appeal or ADR.

(c) You must ensure that before any person reviews the relevant proprietary information they:

(1) Sign and date the certification statement attesting that they have read and understand the confidentiality and liability agreements; and

(2) Agree to be bound by them.

(d) You must maintain all certification statements and provide them to the MMS FOIA Officer upon request.

(e) You must provide all certification statements to the MMS FOIA Officer within 30 days after:

(1) The Department issues a final decision;

(2) You and MMS conclude ADR with a final agreement; or

(3) You withdraw the appeal or request for ADR.

(f) You must state on the front of any appeal or ADR document that it contains relevant proprietary information. You also must identify the relevant proprietary information on each page or record.

(g) You must return the documents as provided in § 243.20.

(h) You are bound by these minimum requirements whether or not they are set forth in the confidentiality agreement.

§ 243.18 May MMS require me to meet more stringent confidentiality standards in some cases?

MMS, at its discretion, may advise you in writing that it will hold you to more stringent standards. For example, MMS may require that only outside counsel review relevant proprietary information if you have breached a previous confidentiality and/or liability agreement, or if you are a direct competitor of the submitter of the third-party proprietary information.

§ 243.19 Am I relieved of the confidentiality and liability agreements and all liability after the appeals process or the ADR process is over?

You must comply with the terms of the confidentiality and liability agreements even after the appeals process or the ADR process is completed. For example, if a final decision is reached through the administrative process or ADR, or you withdraw your appeal or ADR request, you will continue to be liable for any damage resulting from your wrongful disclosure of the proprietary information.

§ 243.20 What do I do with the relevant proprietary information after the appeals process or the ADR process is over?

(a) You must return all relevant proprietary information to the MMS FOIA Officer at the address in § 243.12 (a), along with all copies, excerpts, or summaries of such information, within 60 days after:

(1) The Department issues a final decision;

(2) You and MMS conclude ADR with a final agreement; or

(3) You withdraw the appeal or request for ADR.

§ 243.21 What happens if I don't return the relevant proprietary information?

You will be subject to appropriate sanctions including civil penalties under 30 CFR Part 241 if you fail to return the relevant proprietary information.

[FR Doc. 97–8689 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–MR–P

30 CFR Parts 202 and 216

RIN 1010–AC23

Amendments to Standards for Reporting and Paying Royalties on Gas and the Gas Analysis Report

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service proposes to amend its regulations requiring operators in the Gulf of Mexico Region to report gas at the standard conditions of 14.73 psia (instead of 15.025 psia) and adjusted to 60 degrees Fahrenheit. This change will make the regulations consistent with proposed changes to 30 CFR Part 250.

MMS also proposes to change the requirement for submitting Form MMS–4055, Gas Analysis Report (GAR), from a semiannual basis to submitting a GAR when requested by MMS. This reduction of reporting will help satisfy the requirements of the Paperwork Reduction Act of 1995 by eliminating reports that are no longer used.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Comments should be sent to: David S. Guzy, Chief, Rules and Procedures Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165; courier delivery to Building 85, Denver Federal Center, Denver, Colorado 80225; or e-Mail David__Guzy@smtp.mms.gov. Comments received will be posted on the Internet at http://www.rmp.mms.gov.

SUPPLEMENTARY INFORMATION: We are limiting the comment period to 30 days because this proposal is a minor wording change to the existing regulations, and it parallels the proposed offshore rule.

The intention of the amendments is to keep the regulations in parts 202 and 216 relating to royalty consistent with those relating to offshore minerals management and to reduced reporting requirements on the public.

MMS is seeking comments on the applicable industry standards and practices regarding the pressure at which gas should be measured. Please comment on whether reporting gas measurement at the standard pressure of 14.73 psia is appropriate or whether some other pressure should be adopted.

The principal author of this proposed rulemaking is Lawrence K. Barker of the Compliance Verification Division, Lakewood, Colorado.

Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). This proposed rule would revise RMP's rules for reporting gas at the same standards as Offshore Minerals Management's rules.

Executive Order 12630

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Paperwork Reduction Act

This proposed rule has been examined under the Paperwork Reduction Act of 1995; no new reporting and information collection requirements are included. The current information collection requirements have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. § 3501 *et seq.*, and assigned Clearance Number 1010–0040.

Executive Order 12866

This proposed rule does not meet the criteria for a significant rule requiring review by OMB.

Executive Order 12988

The Department has certified to OMB that this proposed rule meets the applicable reform standards in section 3 (a) and (b)(2).

Unfunded Mandate Reform Act of 1995

The Department has determined and certifies that this proposed rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector.

National Environmental Policy Act of 1969

We have determined that this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 192(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian

lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: March 27, 1997.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202 and 216 are proposed to be amended as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart D—Federal and Indian Gas

2. Section 202.152(a)(1) is revised to read as follows:

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) If you are responsible for reporting production or royalties, you must:

(A) Report gas volumes and Btu heating values, if applicable, under the same degree of water saturation as stated in your sales contract;

(B) Report gas volumes in units of 1,000 cubic feet (mcf); and

(C) Report gas volumes and Btu heating value at a standard pressure base of 14.73 psia and a standard temperature base of 60 degrees Fahrenheit.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for part 216 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3716, 3720A, 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart B—Oil and Gas, General

2. Section 216.54 is revised to read as follows:

§ 216.54 Gas Analysis Report.

When requested by MMS, any operator must file a Gas Analysis Report (GAR) (Form MMS–4055) for each sale or transfer meter. The form must contain accurate and detailed gas analysis information. This requirement applies to offshore, onshore, or Indian leases.

(a) MMS may request a GAR when you sell gas or transfer gas for processing before the point of royalty computation.

(b) When MMS first requests this report, the report is due within 30 days. If MMS requests subsequent reports, they will be due no later than 45 days after the month covered by the report.

[FR Doc. 97–8721 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–97–007]

RIN 2115–AE47

Drawbridge Operation Regulation; Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulation for the operation of the north bascule twin span drawbridges across Lake Pontchartrain between Metairie and Mandeville, Louisiana to authorize them to remain closed to navigation from June 9, 1997, until October 10, 1997, except on alternating weekends. On alternating weekends during this period when working is not being conducted, the draws will open if 3 hours notice is given. This action is necessary to facilitate cleaning and painting of the bascule structures.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this proposed temporary rule.

Comments may be submitted to the above address.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for electronic filing. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid in the implementation of this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**. Because of the need to proceed to final rule by June 1997, a 30 day comment period is being used. The affected area is a small geographic area; notice of publication will be provided in the local notice to mariners, and local business will be contacted.

The Coast Guard will evaluate all comments received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Background and Purpose

The north bascule span of the Greater New Orleans Expressway Commission (GNOEC) across Lake Pontchartrain, Louisiana has a vertical clearance of 42 feet above mean high water in the closed to navigation position and unlimited clearance in the open to navigation position. The Lake Pontchartrain Causeway South Channel fixed span offers an alternate route with a vertical clearance of 50 feet above mean high water. Navigation on the waterway consists of small tugs with tows, fishing vessels, sailing vessels, and other recreational craft.

For protection of the environment, the cleaning and painting operation requires a fully enclosed system with negative air pressure. The special equipment used for this procedure has to be removed each time the draw span is opened. Since this process is time consuming and costly, the equipment

should remain in place for 12-day periods, allowing the contractor to maximize work time.

Painting operations in the counterweight area will require the bridge to be placed in the open to navigation position. During the time in which the span of one bridge is in the open position to be painted, the span of the other bridge will need to be closed to detour vehicular traffic. High weekday traffic volumes and the requirement to paint during daylight will require that the work be done on weekends. Records obtained from the GNOEC indicate that most of the marine traffic requiring a bridge opening is recreational sailboat traffic which normally transits the bridge on weekends. Therefore, painting of the counterweight areas will only be conducted every other weekend. The bridge will operate normally on the alternate weekends, when painting of the counterweight areas is not being conducted, and on the weekends of Independence Day and Labor Day, including adjoining Federal weekday holidays.

The Coast Guard proposes to temporarily change the regulation for the operation of the Greater New Orleans Expressway Commission Causeway, north bascule span so that the draws need not open for the passage of vessels from June 9, 1997 to October 10, 1997 except that on the following dates the draws will open on signal if three hours notice is given: June 21 and 22; July 4, 5 and 6, July 19 and 20, August 2 and 3, August 16, and 17, August 30 and 31 and September 1, September 13 and 14 and September 27 and 28, 1997. In the event of an approaching tropical storm or hurricane, the bridge will be returned to the normal operation within 24 hours.

The Greater New Orleans Expressway Commission has requested this temporary rule so that cleaning and painting of the structure can be accomplished. The short term inconvenience, attributable to a delay of vessel traffic for a maximum of twelve days at any time during this period, is outweighed by the long term benefits to be gained by keeping the bridge free of corrosion and in proper working condition.

Regulatory Evaluation

This proposed temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Bridge tender logs for 46 random weeks throughout 1996 and early 1997 were obtained from GNOEC. The records showed that, other than during weeks with holidays or during weeks when sailboat regattas transit the bridge, an average of 6 vessels per week required openings of the draw spans. Out of 259 vessels which required bridge openings, 224 were recreational sailboats, 32 were commercial vessels, 1 was a commercial fishing vessel and 2 were U.S. Coast Guard construction tenders. On average, 87% of all vessels requiring a bridge opening were recreational sailboats.

The Coast Guard canvassed the small business community by contacting boat yards, marinas and restaurants which operate waterfront facilities in the Lake Pontchartrain area. They were asked if the proposed temporary rule would have an economic impact on their businesses. None of the business operators indicated that the proposed temporary rule would severely impact them. One business stated there could be minor economic impact, but based on the fact that only an average of 6 vessels per week require an opening, and that sailboats which require more than the 50 feet of clearance available at the South Channel Span, would be able to schedule transits through the North Channel Draw every other weekend, no significant impacts would be anticipated.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Several small businesses were individually contacted and requested to verbally comment on the potential economic impacts that the proposed temporary rule could have on them. Based on the comments obtained, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed temporary rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this will have a significant economic impact, please comment, explaining why your business or organization qualifies, and to what degree this proposed rule will economically effect it.

Collection of Information

This proposed temporary rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed temporary rule and concluded that under paragraph 2.B.2.g(5) of Commandant Instruction M16475.1B, this proposed temporary rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.467 a new paragraph (c) to read as follows:

§ 117.467 Lake Pontchartrain.

* * * * *

(c) From 7 a.m. on June 9, 1997 through 6 p.m. on October 10, 1997, paragraph (b) does not apply and, the draws of the Greater New Orleans Expressway Commission Causeway, north bascule span need not open for the passage of vessels; except that on the following dates the draws will open on signal if three hours notice is given:

June 21 and 22; July 4, 5 and 6, July 19 and 20, August 2 and 3, August 16 and 17, August 30 and 31 and September 1, September 13 and 14 and September 27 and 28, 1997. In the event of an approaching tropical storm or hurricane, the draws will return to normal operation within 24 hours.

Dated: March 24, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 97–8507 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5806–2]

Clean Air Act Proposed Approval of Amendment to Title V Operating Permits Program; Pima County Department of Environmental Quality, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes approval of the revision to the Operating Permits Program submitted by the Arizona Department of Environmental Quality (''ADEQ'') on behalf of the Pima County Department of Environmental Quality (''Pima'' or ''County'') for the purpose of complying with section 502(b)(3) of the Clean Air Act (''the Act''), which requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program.

DATES: Comments on this proposed action must be received in writing by May 5, 1997.

ADDRESSES: Comments must be submitted to Ginger Vagenas at EPA, AIR–3, 75 Hawthorne Street, San Francisco, CA 94105. Copies of Pima's submittal and other supporting information used in developing this proposed approval are available for inspection (AZ–Pima–97–1–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street; San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415–744–1252), Mail Code AIR–3, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR Part 70. Title V requires states to develop and submit to EPA, by November 15, 1993, programs for issuing these operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act, which outlines criteria for approval or disapproval.

On November 15, 1993, Pima's title V program was submitted. EPA proposed interim approval of the program on July 13, 1995 (60 FR 36083). The fee provisions of the program were found to be fully approvable. On November 14, 1995, in response to changes in state law, Pima amended its fee provisions under Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code. Those changes were submitted to EPA on January 14, 1997, after it promulgated final interim approval of Pima's title V program (61 FR 55910, October 30, 1996).

II. Proposed Action

EPA is proposing to approve the submitted amendments to the fee provisions of Pima's title V operating permits program. A description of the submitted materials and an analysis of the amendments are included below.

A. Submitted Materials

Pima's title V program amendment was submitted by the Arizona DEQ on January 14, 1997. The submittal includes the revised fee regulations (Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code as amended on November 14, 1995), a technical support document, and a legal opinion by the County Attorney. Additional materials, including proof of adoption and a commitment to provide periodic updates to EPA regarding the status of the fee program, were submitted on February 26, 1997.

B. Legal Opinion

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Pima's submittal includes an opinion from the County Attorney regarding the adequacy of the laws of the State of Arizona and Pima's amended title V program. The County Attorney states:

> [I]t is my opinion that the laws of the state of Arizona provide adequate authority to carry out all aspects of the amended program submitted by the Pima County Air Quality Control District to the EPA. * * *
>
> [T]he Arizona Revised Statutes and Pima County Code, Title 17, ensure that permit fees assessed as part of the Title V (Class 1) permit program will cover all reasonable direct and indirect costs required to develop, administer, and enforce Pima County's Title V Permit Program.

C. Permit Fee Demonstration

Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). Pima has submitted a detailed fee analysis that demonstrates the fees it will collect under the amended rules are adequate to cover program costs.

Title V emission fees. Pima's fee provisions require that the owner or operator of each source required to obtain a title V permit shall pay an annual emissions fee equal to $28.15 per year per ton of actual emissions of all regulated air pollutants, or a specified minimum, whichever is greater. See 17.12.510.C. and 17.12.510.C.5. Beginning in 1994, the emissions fee rate is adjusted to reflect the increase, if any, in the Consumer Price Index. See 17.12.510.C.4.

Emission fees are used by Pima to cover the costs of the Title V related activities not covered by title V permit fees. These activities are inspection services and associated direct and indirect costs. Pima estimates the annual cost of these activities to be $68,640. Based upon known sources and emissions reported by the sources, and using the emission fee ($28.15 per ton, indexed to the CPI beginning in 1994) and the fee schedule, the County estimates its annual revenue from emissions fees will be $70,100.

Permit fees. Pima's fee provisions require that applicants for permits to construct and operate that are subject to title V must pay the total actual cost of reviewing and acting upon applications for permits and permit revisions. See 17.12.510.G. and 17.12.510.I. These fees are used to cover the cost of issuing permits. Pima estimated the permitting related average hourly billing costs for permitting of title V facilities, including salary, fringe benefits, direct non-salary

costs and indirect costs including cost estimates of various types of permit related activities. The estimated hourly cost is $53.60.

Because state law caps hourly fees at $53.00, Pima's hourly charges are capped at $53.00. See 17.12.510.M. Although this cap is 60 cents per hour less than the District's estimated hourly costs for permit processing, EPA finds this provision to be fully approvable. Given the inherent uncertainty in the cost estimates, EPA believes that the difference is insignificant and unlikely to cause a shortfall in revenues. Further, Pima is tracking its program costs and revenues and has committed to provide EPA with periodic updates that will demonstrate whether fee revenues are meeting the costs of the program. If EPA finds that the County is not collecting fees sufficient to fund the title V program, it will require a program revision.

In addition to imposing a cap on hourly fees, state law also limits the maximum chargeable fee for issuing and revising permits. State law and Pima regulations cap Title V permit issuance fees at $30,000. See 17.12.510.G. Pima estimates processing costs for permit issuance at $21,484. Fees for processing permit revisions are capped at $25,000 for significant revisions and $10,000 for minor permit revisions. See 17.12.510.I. Because the workload associated with these classes of permit revisions is likely to vary a great deal, Pima did not attempt to estimate the cost of these actions. The County believes that costs for permit revisions will be less than the maximum allowable fees. (See letter to Dave Howekamp, EPA, from David Esposito, Pima County, dated February 17, 1997.) EPA will periodically review the County program to ensure adequate fees are collected.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed approval. Copies of Pima's submittal and other information relied upon for the proposed interim approval are contained in a docket (AZ–Pima–97–1–OPS) maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by May 5, 1997.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 23, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–8691 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7211]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Weston (Town) Fairfield County.	West Branch Saugatuck River.	At Westport/Weston corporate limit	*44	*47
			Approximately 170 feet upstream of Kramer Lane.	None	*444
		Beaver Brook	Approximately 40 feet upstream of confluence with Saugatuck River.	*78	*77
			Approximately 840 feet upstream of Slumber Corners bridge.	*82	*81
		Jenning's Brook	At the confluence with Saugatuck River ..	*124	*125
			Approximately 420 feet above the confluence with Saugatuck River.	*131	*130
Maps available for inspection at the Weston Building Office, 56 Norfield Road, Weston, Connecticut.					
Send comments to Mr. George Guidera, First Selectman of the Town of Weston, 56 Norfield Road, Weston, Connecticut 06883.					
Connecticut	Westport (Town) Fairfield County.	West Branch, Saugatuck River.	At approximately 550 feet above confluence with Saugatuck River.	*31	*32
			At approximately 1,400 feet upstream of Newton Turnpike.	None	*93
Maps available for inspection at the Westport Town Hall, Office of the Town Planner, 110 Myrtle Avenue, Westport, Connecticut.					
Send comments to Mr. Joseph P. Arcudi, First Selectman of the Town of Westport, 110 Myrtle Avenue, Town Hall, Westport, Connecticut 06880.					
New York	Fort Ann (Town) Washington County.	Copeland Pond	Entire shoreline within community	None	*453
		Hadlock Pond	Entire shoreline within community	None	*458
		Lakes Pond	Entire shoreline within community	None	*864
		Lake Nebo	Entire shoreline within community	None	*843
		Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Fort Ann Town Clerk's office, Route 4 in the Village of Fort Ann, Fort Ann, New York.					
Send comments to Mr. John Aspland, Fort Ann Town Supervisor, RR 1, Box 1303, Fort Ann, New York 12827.					
New York	Sag Harbor (Village) Suffolk County.	Sag Harbor Bay	Approximately 400 feet east of the intersection of Harding Terrace and Taft Place.	*10	*9
			Approximately 350 feet north of the intersection of Harding Terrace and Taft Place.	*12	*11
Maps available for inspection at the Village Office, 55 Main Street, Sag Harbor, New York.					
Send comments to The Honorable Pierce W. Hance, Mayor of the Village of Sag Harbor, P.O. Box 660, Sag Harbor, New York 11963.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
New York	Southampton (Town) Suffolk County.	Seatuck Creek	North of Main Street	None	*9
Maps available for inspection at the Southampton Town Hall, Building and Zoning Department, 116 Hampton Road, Southampton, New York.					
Send comments to Mr. Vincent J. Cannuscio, Southampton Town Supervisor, 116 Hampton Road, Southampton, New York 11968.					
Maryland	Frederick County (Unincorporated Areas).	Fishing Creek	Approximately 0.27 mile downstream of Devilbiss Bridge Road.	None	*274
			Approximately 0.84 mile upstream of Mountaindale Road.	None	*665
		Fishing Creek	At confluence with Fishing Creek	None	*471
		Diversion Channel	At divergence from Fishing Creek	None	*523
Maps available for inspection at the Winchester Hall, 12 East Church Street, Frederick, Maryland.					
Send comments to Mr. Mark Hoke, President of the Board of County Commissioners, 12 East Church Street, Frederick, Maryland 21701.					
Michigan	Broomfield (Township) Isabella County.	Chippewa River	Approximately 300 feet downstream of the downstream corporate limits, approximately 0.4 mile upstream of River Road.	None	*857
			Approximately 0.3 mile upstream of the upstream corporate limits, approximately 0.8 mile downstream of School Road.	None	*861
		Chippewa River (Lake Isabella).	For the entire shoreline within the community.	None	*899
Maps available for inspection at the Broomfield Township Hall, 2915 South Rolland Road, Remus, Michigan.					
Send comments to Ms. Betty Findley, Broomfield Township Supervisor, 4620 South Brinton, Remus, Michigan 49340.					
Michigan	Chippewa (Township) Isabella County.	Chippewa River	At downstream corporate limits (county boundary).	None	*685
			Approximately 2.4 miles upstream of Leafon Road.	None	*730
Maps available for inspection at the Chippewa Town Hall, 11050 East Pickard Road, Mount Pleasant, Michigan.					
Send comments to Mr. George Grim, Chippewa Township Supervisor, P.O. Box 459, Shepherd, Michigan 48883.					
Michigan	Coldwater (Township) Isabella County.	Chippewa River	At Vernon Road	None	*939
			Approximately 0.47 mile upstream of Vernon Road.	None	*941
Maps available for inspection at the Coldwater Township Hall, 7450 West Grass Lake Road, Lake, Michigan.					
Send comments to Mr. James Dague, Coldwater Township Supervisor, 11023 West Battle Road, Lake, Michigan 48632.					
Michigan	Deerfield (Township) Isabella County.	Chippewa River	Approximately 800 feet downstream of Meridian Road.	None	*778
			Approximately 200 feet upstream of upstream corporate limits.	None	*861
Maps available for inspection at the Office of the Deerfield Township Clerk, 4385 West Pickard Road, Mt. Pleasant, Michigan.					
Send comments to Mr. Edwin Courser, Deerfield Township Supervisor, 1850 South Gilmore Road, Mt. Pleasant, Michigan 48858.					
Michigan	Mt. Pleasant (City) Isabella County.	Chippewa River	Approximately 1,200 feet upstream of Mission Road.	None	*745
				*763	*764
			Approximately 1.1 miles downstream of Lincoln Road.		
Maps available for inspection at the Mt. Pleasant City Hall, 401 North Main Street, Mt. Pleasant, Michigan.					
Send comments to The Honorable Susan Smith, Mayor of the City of Mt. Pleasant, 401 North Main Street, Mt. Pleasant, Michigan 48858.					
Michigan	Nottawa (Township) Isabella County.	Chippewa River	Approximately 200 feet downstream of the downstream corporate limits.	None	*860
			Approximately 900 feet upstream of the upstream corporate limits.	None	*862
Maps available for inspection at the Nottawa Township Supervisor's Office, 4668 North LaPearl Road, Weidman, Michigan.					
Send comments to Mr. James W. Faber, Nottawa Township Supervisor, 4668 North LaPearl Road, Weidman, Michigan 48893.					
Michigan	Sherman (Township) Isabella County.	Chippewa River	At the downstream corporate limits	None	*861
			At Vernon Road	None	*939

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Sherman Township Hall, 3550 North Rolland Road, Weidman, Michigan. Send comments to Mr. Thayne Sizes, Sherman Township Supervisor, 3550 North Rolland Road, Weidman, Michigan 48893.					
Michigan	Union (Charter Township) Isabella County.	Chippewa River	Approximately 2.3 miles upstream of Leaton Road.	None	*730
			At Meridian Road	None	*780
Maps available for inspection at the Union Township Hall, 2010 South Lincoln Road, Mt. Pleasant, Michigan. Send comments to Mr. Jim Collin, Union Charter Township Supervisor, 2010 South Lincoln Road, Mt. Pleasant, Michigan 48858.					
North Carolina	Raleigh (City) Wake County.	Neuse River	Approximately 1.13 miles upstream of State Route 2555.	*171	*172
			Approximately 2,000 feet upstream of Milburn Dam.	*181	*182
Maps available for inspection at the Raleigh City Hall, Planning Department, 222 West Hargett, Room 307, Raleigh, North Carolina. Send comments to The Honorable Tom Fetzer, Mayor of the City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.					
North Carolina	Wake County (unincorporated areas).	Neuse River (Basin 15, Stream 1).	Upstream side of State Route 2509	*163	*164
			Approximately 2,000 feet upstream of Milburn Dam.	*181	*182
Maps available for inspection at the Wake County Office Building, Engineering Department, 336 South Salisbury Street, Raleigh, North Carolina. Send comments to Mr. Richard Stephens, Wake County Manager, 337 South Salisbury Street, Raleigh, North Carolina 27601.					
South Carolina	Mullins (City) Marion County.	Fowler Branch	At corporate limits	None	*86
			At State Route 41	None	*92
		White Oak Creek	Approximately 1,975 feet downstream of Cleveland Street.	None	*72
			Approximately 350 feet upstream of U.S. Route 76.	None	*87
Maps available for inspection at the Mullins City Hall, 161 Northeast Front Street, Mullins, South Carolina. Send comments to The Honorable Wayne George, Mayor of the City of Mullins, P.O. Box 408, Mullins, South Carolina 29574.					
Vermont	Waterbury (Town) Washington County.	Winooski River	At Bolton Falls Dam	*405	*409
			Approximately 1,400 feet downstream of the most upstream corporate limits.	*433	*432
Maps available for inspection at the Waterbury Town Office, 51 South Main Street, Waterbury, Vermont. Send comments to Mr. William Shepeluk, Waterbury Town Manager, 51 South Main Street, Waterbury, Vermont 05676.					
Vermont	Waterbury (Village) Washington County.	Winooski River	At U.S. Route 2 bridge	*427	*426
			Approximately 700 feet upstream of U.S. Route 2 bridge.	*428	*427
Maps available for inspection at the Waterbury Village Office, 51 South Main Street, Waterbury, Vermont. Send comments to Mr. William Shepeluk, Waterbury Village Manager, 51 South Main Street, Waterbury, Vermont 05676.					
Virginia	Pulaski County (unincorporated areas).	Claytor Lake/ New River	At downstream county boundary	None	*1,666
			Approximately 6.9 miles upstream of confluence of Sloan Branch.	None	*1,868
		Little River	At confluence with New River	None	*1,759
			At upstream county boundary	None	*1,836
		Peak Creek	Approximately 0.6 mile downstream of the confluence of Thorne Springs Branch.	None	*1,865
			At Town of Pulaski corporate limit	None	*1,887
Maps available for inspection at the Pulaski County Administration Building, 143 Third Street NW, Suite 1, Pulaski, Virginia. Send comments to Mr. Joseph N. Morgan, Pulaski County Administrator, 143 Third Street, NW, Suite 1, Pulaski, Virginia 24301.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 27, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–8661 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 97–95; FCC 97–85]

Spectrum Allocation Proposals for Fixed-Satellite, Fixed, Mobile, and Government Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this Notice of Proposed Rulemaking, the Commission proposes to designate 4 gigahertz of spectrum predominantly for Fixed-Satellite Services (''FSS''). These proposals are for the 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz bands. The Commission also proposes allocations for the 37.0–38.0 GHz, 40.0–40.5 GHz, 40.5–42.5 GHz and 46.9–47.0 GHz bands. The Commission solicits comment on sharing with Government users in the bands proposed primarily for satellite services. In addition, to place today's proposals in context and because some parties have submitted proposals that cross some of these bands, this Notice sets forth and seeks comment on a broad plan for the 36–51.4 GHz bands.

DATES: Comments must be submitted on or before May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Virginia Marshall, Attorney, Satellite Policy Branch, International Bureau, (202) 418–0778; Kathleen Campbell, International Bureau, (202) 418–0753.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 97–95; FCC 97–85, adopted March 13, 1997 and released March 24, 1997. The complete text of the Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

This Notice of Proposed Rulemaking contains no information collections or third party disclosure requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (PRA).

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected significant economic impact on small entities by the policies proposed in this Notice of Proposed Rulemaking.

Summary of the Notice of Proposed Rulemaking

1. This Notice presents and seeks comment on a band plan for the 36–51.4 GHz frequency band. The Commission developed this band plan to accommodate satellite services in a manner that does not disrupt existing terrestrial services in these bands. Prior Commission proceedings regarding these bands focused primarily on terrestrial operations. More recently, the Commission has received requests for alternative uses of the spectrum, including a proposal for a non-geostationary orbit fixed satellite system.

2. Due to the difficulty of sharing between ubiquitous terrestrial and satellite licensees in the same frequency band the Commission developed a band plan that designates spectrum for different types of high-density services. The band plan is depicted in the following table:

Frequencies	Proposed commercial designations	Other permissible operations
36.0–37.0 GHz	No Change	Current and Proposed Government Earth Exploration-Satellite/ Space Research, Fixed, and Mobile.
37.0–37.5 GHz	Wireless Services	Proposed addition of Government co-primary Space Research allocation to the 37.0–38.0 GHz band.[1]
37.5–38.5 GHz	FSS (NGSO) and possible Wireless Underlay	Proposed addition of Government co-primary Space Research allocation to the 37.0–38.0 GHz band.
38.5–38.6 GHz	Wireless Services.	
38.6–40.0 GHz[2]	Wireless Services.	
40.0–40.5 GHz	Wireless Services	Proposed addition of Government co-primary Space Research and Earth Exploration-Satellite allocation to 40.0–40.5 GHz.
40.5–41.5 GHz	FSS (GSO) and possible Wireless Underlay.	
41.5–42.5 GHz[3]	Wireless Services	
42.5–43.5 GHz	No Change	Current Government Radioastronomy.
43.5–45.5 GHz	No Non-Government Allocation	Current Government FSS (Military).
45.5–46.7 GHz	No Change	Future Government Mobile, MSS, and Radionavigation-Satellite.
46.7–46.9 GHz	No Change	Current Unlicensed Commercial Vehicular Radar and Government Radionavigation-Satellite.
46.9–47.0 GHz	Wireless Services.	
47.0–47.2 GHz	No Change	Amateur.
47.2–48.2 GHz[4]	Wireless Services.	
48.2–49.2 GHz	FSS (NGSO) and possible Wireless Underlay.	
49.2–50.2 GHz	FSS (GSO) and possible Wireless Underlay.	
50.2–50.4 GHz	No Change	Government Passive Earth-Exploration Service.
50.4–51.4 GHz	Wireless Services.	

[1] Specific proposals for Government allocations at 37.0–38.0 GHz and 40.0–40.5 GHz will be addressed later in this document.

[2] We have already received comment on our proposal on this band segment and will take action in our 39 GHz proceeding. *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands—Implementation of Section 309(j) of the Communications Act, *Notice of Proposed Rulemaking and Order*, 11 FCC Rcd 5930 (1995).

[3] As discussed above, we proposed this band, for licensed commercial use, in our Millimeter Wave NPRM and will address this proposal in a separate proceeding. *See* In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, *Notice of Proposed Rule Making*, 9 FCC Rcd 7078 (1994).

[4] We have already received comment on our proposal on this band segment and will take action in our Millimeter Wave proceeding. *See* In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, *Notice of Proposed Rulemaking*, 9 FCC Rcd 7078 (1994) and *First Report and Order and Second Notice of Proposed Rulemaking*, 11 FCC Rcd 4481 (1995).

3. The Commission proposes to designate 4 gigahertz of spectrum for fixed-satellite services and 4.6 gigahertz of spectrum for domestic wireless services. The Notice of Proposed Rulemaking seeks comment on the overall band plan. Government allocations also are present throughout most of the 36–51.4 GHz spectrum. The Commission has worked with the National Telecommunications and Information Administration to develop a mechanism for commercial and Government sharing in these bands.

4. The Commission proposes a series of allocations consistent with its proposed band plan. The Notice seeks only to add, not delete, allocations to the U.S. Table of Frequency Allocations. First, the Commission proposes to allocate the 37.5–38.5 GHz (space-to-Earth) band and designate 48.2–49.2 GHz (Earth-to-space) for predominantly non-geostationary orbit fixed-satellite operations. The Commission proposes to allocate the 40.5–41.5 GHz (space-to-Earth) and designate the 49.2–50.2 GHz bands for geostationary orbit fixed-satellite operations. Second, the Commission seeks comment on whether, and to what extent, other terrestrial operations may be accommodated in these fixed-satellite bands. The Commission uses the term ''underlay'' service to describe this concept.

5. Third, the Commission proposes to upgrade the fixed and mobile allocations in the 40.5–42.5 GHz band. Fourth, the Commission proposes to add a fixed allocation to the 46.9–47.0 GHz band. Finally, the Commission proposes to add allocations to the Government column of the U.S. Table of Frequency Allocations. NTIA has requested that a primary Earth-Exploration Satellite allocation (space-to-Earth) be added to the Government column of the 37.0–38.0 GHz band. The NTIA requests the addition of a primary Space Research and Earth-Exploration Satellite (Earth-to-space) allocation to the Government allocation at 40.0–40.5 GHz. NTIA also requests the addition of a secondary Earth-Exploration Satellite (space-to-Earth) at 40.0–40.5 GHz. The Commission proposes these allocations for the Government column of the U.S. Table of Frequency Allocations.

Initial Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected significant economic impact on small entities by the policies proposed in this Notice of Proposed Rulemaking. Written and public comments are requested by the IRFA and must be filed by the deadlines for comments on this Notice.

I. Reason for Action

7. This rulemaking proceeding is being initiated to obtain comment and develop a record on certain proposals in the 36–51.4 GHz frequency band. Specifically, this Notice proposes to designate spectrum for fixed-satellite services, both geostationary and non-geostationary satellite orbit, systems at 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz. In addition, this Notice seeks comment on a proposal to achieve sharing between Government and non-Government operations in these bands. Finally, this Notice outlines and seeks comment on the domestic allocations necessary to accommodate both terrestrial and satellite services as discussed in the item.

II. Objectives

8. The Commission seeks to allocate spectrum for predominantly fixed satellite uses, in a manner that minimizes disruption to existing services. The proposed band plan will promote the technological developments in the millimeter wave bands (30–300 GHz), encourage effective competition, and provide customers with additional satellite service providers.

III. Legal Basis

9. The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and sections 1, 4(i), 4(j), 301 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, and 303.

IV. Description and Estimate of Small Entities Subject to the Rules

10. The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite service licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million in annual receipts.[5] According to Census Bureau data., there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[6] However, since this is a new service, we are unable, at this time, to provide a reasonable estimate of how many of these entities will be providing these services.

V. Reporting, Recordkeeping, and Other Compliance Requirements

11. The proposal under consideration in this Notice, involve no reporting requirements at this time. Final service and licensing rules will be proposed at a later date.

VI. Any Significant Alternatives Considered

12. This Notice solicits comment on other alternatives such as other mechanisms of Government/non-Government sharing in these bands proposed primarily for FSS uses. The Notice also requests comment on whether a sufficient amount of spectrum has been designed for terrestrial and satellite services or whether a different split would be better.

13. The proposed fixed-satellite designations would apply to those bands proposed primarily for FSS uses. Furthermore, the proposed Government sharing mechanisms would apply to satellite licensees throughout the 36–51.4 GHz frequency band. This item should positively impact both large and small businesses by providing additional spectrum in which to provide services. Our proposals would not displace incumbent operators. We will be able to address small business concerns regarding specific sub-bands as we proceed to establishing licensing and service rules for those bands.

VII. Federal Rules That Overlap, Duplicate or Conflict With These Proposed Requirements

14. None.

[5] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[6] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms,: 1992, SIC Code 4899 (issued May 1995).

Ordering Clauses

15. Accordingly, it is ordered that pursuant to the authority contained in sections 1, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, and 303, notice is hereby given of our intent to adopt the policies set forth in this Notice and that comment is sought on all proposals in this Notice.

16. It is ordered that, the Petition for Rule Making, filed by Motorola Satellite Communications, Inc. is granted to the extent it is consistent with our proposals.

17. It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–8562 Filed 4–3–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 7]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting; correction.

SUMMARY: On February 21, 1997, RSPA's Office of Pipeline Safety (OPS) published a notice of public meeting (62 FR 7985) that announced the first meeting of an advisory committee to conduct a negotiated rulemaking to develop a proposed rule on qualifications of pipeline employees performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The notice also listed and described the organizations represented on the committee. This document makes two minor revisions to the information in that notice.

DATES: The advisory committee's first meeting will be held from 8:30 am to 5:00 pm on April 23–24, 1997.

ADDRESS: The advisory committee meeting will be held in Room 10234–36 at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

Correction of Publication

Room Number

On page 7985, in the second column, the correct room number for the advisory committee is 10234–36.

Description of Committee Members

On page 7986, at the bottom of the second column, the text describing the International Union of Operating Engineers should read as follows: ''This labor organization represents the interests of a substantial number of pipeline workers.'' In addition, the text describing the International Brotherhood of Electrical Workers should read as follows: ''This labor organization represents approximately 21,000 pipeline construction and maintenance workers.''

Issued in Washington, DC, on March 31, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–8571 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Hawkhill Technologies' (Hawkhill) petition to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 108, Lamps, reflective devices, and associated equipment, to require programmable turn signaling on all vehicles. The turn signal system Hawkhill proposed would allow the driver to preset the amount of time a turn signal remains activated before automatically turning off.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By letter dated November 20, 1996, Hawkhill petitioned the agency to amend FMVSS No. 108 to require all vehicles to have programmable turn signaling capability. More specifically, the turn signal systems would allow drivers to preset the amount of time their turn signals will remain activated before they turn off automatically. This would be accomplished by the driver tapping the turn signal lever. For each time the lever is tapped, the turn signal would stay activated for 4.5 seconds. Hawkhill's contention is that this would be a virtually cost-free upgrade for vehicles with turn signals that are already computer-controlled. The computer-controlled turn signal system would simply be redesigned to account for the new system.

Hawkhill believes that drivers are often lax in the way they operate turn signals. According to Hawkhill, drivers are most lax in situations where they have to deactivate turn signals, such as merge, exit, and lane change maneuvers. Hawkhill believes that its system, which allows drivers to program their turn signals to automatically shut off after some chosen time interval, would reduce the number of instances when drivers inadvertently leave their turn signal on after completing the driving maneuver.

In addition, Hawkhill believes its automatic turn signal shut-off would reduce the instances when vehicle operators choose not to use their turn signals to signal maneuvers. It believes that this occurs in maneuvers where the turn signals are commonly activated using the ''lane change'' feature (where the turn signal lever is pushed just far enough to activate the turn signal, but is deactivated when the driver removes his or her hand). In these situations, Hawkhill asserts that some drivers do not use their signals because they are not able to concentrate on the other tasks necessary to complete the maneuver while holding down the lever.

Agency Analysis

NHTSA believes there are two distinct issues involved in these claims. Hawkhill's latter claim relates to drivers who fail to use their turn signals because of some perceived difficulty. NHTSA is very interested in actions that would increase the use of turn signals to alert other drivers of an impending maneuver. However, Hawkhill provided

no data whatsoever to support its assertion that some drivers perceive a difficulty in utilizing their turn signal system's ''lane-change'' feature and, therefore, fail to signal their maneuver. Absent such data, NHTSA has no reason to believe that requiring an automatic turn signal would significantly increase their use.

Hawkhill's other claim is that its system would address situations when a driver inadvertently leaves the turn signal on after completing a driving maneuver that does not turn the wheel enough to trigger the current automatic shut-off feature required in S5.1.1.5 of FMVSS No. 108. Hawkhill's system is designed to address this situation. However, NHTSA believes this is a much less frequent occurrence than the failure to signal. We base this on anecdotal evidence and driving experience in the Washington, DC metropolitan area. In addition, manufacturers have taken voluntary steps to address this problem with the ''lane-change'' feature discussed previously. For example, General Motors has designed all its Skylarks with a turn signal reminder chime that gives the driver an added signal if the turn signal indicator is still on after one half mile of driving. *See* 61 FR 56734, November 4, 1996. Further, because the standard would not preclude the use of Hawkhill's proposed turn signal system, perhaps manufacturers will voluntarily place this feature in some of their vehicles as well.

Hawkhill provided no data to indicate the size of the safety problem that would be addressed by automatically turning off turn signals in situations not addressed by the current automatic shut-off requirement. Absent such data, NHTSA has no information indicating this is a large problem. Most vehicles do not now have computer-controlled turn signals, nor does the agency have any information indicating that a significant number of vehicles will be equipped with them in the near future. If we assume for the sake of discussion that as many as half of the 16 million light vehicles produced each year will be equipped with computer-controlled turn signals in the near future, that would still leave eight million vehicles that would need to be redesigned. At a cost of $10 per vehicle to redesign the turn signal circuit, that would translate into an annual cost of $80 million. NHTSA would not consider imposing costs of this magnitude without some clear and convincing evidence that it would produce safety benefits commensurate with this cost. In this case, there are no data or other information suggesting the safety benefits would be anything more than marginal.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies Hawkhill's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: March 31, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–8613 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, 644, and 678

[I.D. 030497E]

Establishment of Highly Migratory Species Advisory Panels; Combination of Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed process; request for comments.

SUMMARY: NMFS solicits comments on the feasibility of developing Fishery Management Plans (FMPs) for Atlantic shark, swordfish, and tunas. If NMFS were to develop one FMP, it would establish one Highly Migratory Species (HMS) Advisory Panel (AP) for those species to assist NMFS in the collection and evaluation of information relevant to the preparation of the consolidated HMS management plan for those species. A combined HMS FMP and AP would reduce the burden on the AP members, in addition to being consistent with existing laws such as the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act (NEPA), and other holistic, ecosystem approaches to fishery management. The HMS AP would include representatives from all interests in Atlantic HMS fisheries.

DATES: Comments must be submitted on or before May 15, 1997.

ADDRESSES: Comments should be submitted to Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Comments may be submitted by fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act (Public Law 104–297) FMPs shall be prepared with respect to any HMS fishery. APs must be established to consult with NMFS in the collection and evaluation of information relevant to the preparation or amendment of HMS FMPs. Nominations have already been solicited for a billfish AP and a pelagic longline AP. Prior to requesting nominations for AP members regarding tunas, sharks or swordfish, NMFS solicits comments on options for developing FMPs for Atlantic tunas, shark, and swordfish. Separate FMPs already exist for billfish, sharks, and swordfish. No FMP exists for Atlantic tunas.

Due to the overlap of biological characteristics and management issues concerning Atlantic tunas, sharks, and swordfish, NMFS believes there may be benefit to combining some or all of the FMPs to reduce time and financial resources and to produce a cohesive plan for multispecies fishery management. Likewise, participants and interested parties overlap in these HMS fisheries, and NMFS believes there may be benefit to combining some or all of the APs to reduce time and financial resources needed for participation in the APs as well as the administration of the APs. A combined Atlantic tunas, swordfish, and shark FMP could also be less burdensome to the constituency in that many issues are common to the three species groups.

The purpose of the combined HMS AP would be to assist NMFS in the development of this FMP. The first action would be the development of new requirements (i.e., bycatch, overfishing) of the Magnuson-Stevens Act.

In addition, a combined HMS FMP for these species would be consistent with the Magnuson-Stevens Act, NEPA, regulatory reform (consolidated HMS regulations), and other holistic ecosystem approaches to fishery management. HMS fisheries and HMS stocks are interdependent. Boundaries overlap between fisheries, gears, and geographical locations and an ecosystem approach to management would be useful and efficient.

An alternative approach could include developing a separate Atlantic tunas FMP and combining the existing shark and swordfish FMPs into one. However, similarities among these fisheries and the participation of many fishermen in all three fisheries make this option less preferable.

A final option would include developing a separate Atlantic tunas FMP and keeping the existing shark and swordfish FMPs separate. This option appears to be the least desirable as evidenced by recent public comments concerning proposed amendments to these two FMPs.

NMFS is also soliciting comments on the appropriate role of existing advisory groups and or processes (Shark Operations Team, Negotiated Rulemaking for Atlantic tunas) in light of the establishment of HMS APs, whether or not they are combined.

Once NMFS has collected comments regarding the appropriate combination and/or separation of the tuna, shark, and swordfish FMPs, and thus of the APs, NMFS will issue a separate **Federal Register** document calling for nominations for members of the AP(s).

Tentative Schedule

NMFS intends to establish all APs (combined or separate APs for Shark, Swordfish, and Tunas) by July 1, 1997.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–8567 Filed 4–3–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 65

Friday, April 4, 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

Forest Service

Water Rights Task Force Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Forest Service announces meetings of the Water Rights Task Force established on August 20, 1996, in accordance with the provisions of the Federal Agricultural Improvement and Reform Act of 1996, as amended. The chairman has scheduled the eighth meeting of the Task Force in Washington, D.C., on April 21–22, 1997, and the ninth meeting on May 19, 1997, in Boise, Idaho.

DATES: The meeting in Washington, D.C., will be held April 21 from 8:00 a.m. to 3:00 p.m. and April 22 from 8:30 a.m. to 5:00 p.m. The meeting in Boise will be held May 19 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The eighth meeting will be held in Room G–11 of the Dirksen Senate Office Building, First Street and Constitution Avenue, on April 21, and in the Training Room of the Auditors Building, 201 14th Street, S.W., Washington, D.C., on April 22. The ninth meeting will be held in the White Pine Conference Room of the Red Lion Downtowner Hotel, 1800 Fairview Avenue, Boise, Idaho.

Send written comments to Eleanor Towns, FACA Liaison, Water Rights Task Force, c/o USDA Forest Service, MAIL STOP 1124, P.O. Box 96090, Washington, DC 20090–6090. Telephone: (202) 205–1248; Fax: (202) 205–1604.

FOR FURTHER INFORMATION CONTACT: Stephen Glasser, Watershed & Air Management Staff, Telephone: (202) 205–1172; Fax: 205–1096.

SUPPLEMENTARY INFORMATION: The Water Rights Task Force is composed of seven members appointed by Congress and the Secretary of Agriculture to study and make recommendations on issues pertaining to water rights. All meetings are open to the public. However, time for the public to address the Task Force will be provided at the Washington meeting on April 21, 1997, from 1:00 p.m. to 3:00 p.m. in Room G–11 of the Dirksen Senate Office Building, and at the Boise meeting on May 19, 1997, from 3:00 p.m. to 5:00 p.m. Discussion is limited only to Task Force members and Forest Service personnel. Persons who wish to bring water rights matters to the attention of the Task Force may file written statements with the Forest Service liaison at the address listed earlier in the notice either before or after each meeting.

Notice of the establishment of the Water Rights Task Force was published in the **Federal Register** on September 11, 1996, (61 FR 47858). The Task Force terminates either in August of 1997, or upon submission of a final report.

Dated: March 31, 1997.

Barbara C. Weber,

Acting Chief.

[FR Doc. 97–8676 Filed 4–3–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Corrugated Plastic MM Trays
P.S. 3925
(U.S. Postal Service requirements for East Hartford, CT; Somerville, NJ; Soysset, NY and Baltimore, MD)
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–8655 Filed 4–3–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Master Baster
M.R. 802
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

Services

Grounds Maintenance, U.S. Army Reserve Center, Parkersburg, West Virginia
NPA: SW Resources, Inc., Parkersburg, West Virginia

Janitorial/Custodial, VA Outpatient Clinic, Pensacola, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida

Janitorial/Custodial, Beltsville Agricultural Research Center, Building 001, Beltsville, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Janitorial/Custodial, Veterans Center, Roanoke, Virginia
NPA: Goodwill Industries of Tinker Mountain, Inc., Salem, Virginia

Medical Transcription, Veterans Affairs Medical Center, Alexandria, Louisiana
NPA: The Lighthouse of Houston, Houston, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–8656 Filed 4–3–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 6, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 64666) of proposed addition to the Procurement List. Comments were received from a foam fabricator which made the helmet liner when it was procured for developmental purposes. The commenter alleged that it would be severely impacted by the Committee's action, taking into account other items the Committee has added to the Procurement List which the commenter considered lost business opportunities. The commenter also noted that it purchased a special machine to print the helmet liners, made expenditures for tooling, and entered into a long-term agreement for raw materials which required helmet liner production to keep prices low.

The Government's estimated quantity of helmet liners to be procured has been reduced to less than 5% of the initial quantity expected to be procured by the Government when the item was under development. Given the substantial decrease in the quantity being procured, the loss of sales by the contractor is not in the range the Committee considers severe, even when the impact of the one other Procurement List addition where the commenter was the current contractor is taken into account. That addition involved fuel tank inserts for military aircraft. The Committee does not agree with the commenter's contention that it was the contractor for a foam item for the U.S. Mint because it did not receive the award for that item.

Under the Government's competitive bidding system, no contractor is guaranteed a contract. Consequently, a firm assumes the risk of loss for new equipment purchases or commitments for raw materials in anticipation of receiving a new contract when the contract is awarded to another firm. Because this could occur regardless of the Committee decision to add the item involved to the Procurement List, the Committee does not consider losses that may be experienced related to equipment, tooling, and raw materials to constitute severe adverse impact on a particular contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Liner, Foam Impact
8465–01–420–4920

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–8657 Filed 4–3–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 20, 1996, January 17, 31, and February 14, 1997 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 67306, 62 FR 2644, 4722 and 6946) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bucket, Plastic
M.R. 997
Office and Miscellaneous Supplies
(Requirements for the Naval Air Station, Corpus Christi, Texas)

Services

Janitorial/Custodial, for the following Blaine, Washington locations:
Pacific Highway Border Station
Pacific Highway Border Station, Building #1
Pacific Highway Border Station, USDA Building
Border Patrol Sector Headquarters and Annex
Peace Arch Border Station

Storage/Distribution of Badges, Insignia Patches and Other Accouterments, Defense Personnel Support Center, Philadelphia, Pennsylvania
(25% of the Government's requirement)

Switchboard Operation, Cannon Air Force Base, New Mexico

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–8658 Filed 4–3–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 96–00007.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Committee for the Fair Allocation of Rice Quotas (''Committee''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1996).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Semi-milled and wholly milled rice, whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) (referred to as ''milled rice'') and husked (brown) rice (Harmonized Tariff Schedule 1006.20).

Export Markets

For purposes of administering the European Union's tariff rate quota: The countries of the European Union.

For purposes of Export Trade Activity and Method of Operation 3: All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. The Committee will administer a system for allocating the U.S. share of the European Union (''EU'') tariff rate quotas (''TRQs'') for milled rice and brown rice (roughly 38,000 tons of milled rice and 8,000 tons of brown rice) agreed to as compensation to the

United States for the enlargement of the EU to include Austria, Finland, and Sweden, as follows:

a. The Committee will operate a quota tender system in which certificates of quota will be offered on open tender to the highest bidder 30 days prior to the release of each TRQ tranche, as defined by the EU.

b. The administration of the quota tender system will be carried out by an independent economic consultant, who will be retained by the Committee for purposes of administering the tender program.

c. The Committee, through its consultant, will offer the TRQ tranche in 20 ton increments. Anyone, whether a member of the Committee or not, will be eligible to bid, upon posting a bid bond equal to five percent of the bid.

d. Thirty days prior to the beginning of each TRQ tranche, the Committee will publish a request to bid in the Journal of Commerce. Potential bidders will have five working days to respond to the bid request. (If the EU announces the opening of a TRQ tranche less than 30 days before the opening of that tranche, the consultant will publish the required notice within 2 working days of the EU announcement and specify a bid date that is at least 5 working days after the notice is published.) All bid information will be returned to the consultant within five working days. At the close of the five day period, the consultant will award certificates of quotas to the highest bidder upon payment of monies bid. Additionally, the certificates will be tradable.

e. In the event that identical highest bids are submitted on available tonnage of TRQ, the consultant will award the available tonnage on a pro-rata basis among the relevant bidders.

2. The Committee will use membership fees to pay for the costs of operating the quota tender system. Any operating costs not covered by the assessment of membership fees will be paid from the quota proceeds.

3. During the first year, the Committee will redistribute all remaining proceeds as follows:

a. 50 percent to the Rice Foundation, a non-profit organization established as the research and development arm of the U.S.A. Rice Federation;

b. 50 percent to the U.S.A. Rice Federation or the Rice Millers' Association for international market promotion activities; and

c. Zero percent to Members according to their proportionate share of world exports of U.S. origin rice during the previous marketing year.

4. For subsequent years, the distribution percentages in item 3 may be modified to allow the distribution of proceeds to Members according to their proportionate share of world exports of U.S. origin rice during the previous marketing year.

5. Bidders will provide the consultant with bidding information on a confidential basis. The consultant may release only the identity of the winning bidder(s). After the first year, if a distribution is to be made to Members, the Members will provide information on their share of world exports of U.S. origin rice independently and on a confidential basis. This information shall be kept confidential.

6. The Committee and/or its Members may:

a. Provide for an administrative structure to implement the foregoing tariff rate quota system, relating to the U.S.-EU Compensation Agreement and EU regulations, including the hiring of an independent economic consultant to administer the quota tender system;

b. Exchange and discuss information regarding the structure and method for administering the foregoing tariff rate quota system, relating to the U.S.-EU Compensation Agreement and EU regulations;

c. Discuss the type of information needed regarding past transactions and exports that are necessary for administering the foregoing tariff rate quota system relating to the U.S.-EU regulations and for effectuating any distribution of proceeds arising out of the administration of the system.

Abbreviated Amendment Procedures

New Committee members may be incorporated in the Certificate through an abbreviated amendment procedure. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the Committee members that desire to become Members under the Certificate pursuant to the abbreviated amendment procedure and certifying for each such member so identified its sale of individual products in its prior fiscal year. Notice of the members so identified shall be published in the **Federal Register**. However, the Committee may withdraw one or more individual Members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate, such amendment must be sought through the non-abbreviated amendment procedure.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither the Committee, the consultant, nor any Member shall intentionally disclose, directly or indirectly, to any other Member (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information regarding the Committee's or any other Member's costs, production, inventories, domestic prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide export sale and the disclosure is limited to the prospective purchaser.

2. The Committee and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Members (Within the Meaning of Section 325.2(l) of the Regulations)

Louis Dreyfus Corporation, Wilton, Connecticut; and, Riviana Foods, Inc., Houston, Texas.

Definitions

''Member'' means a member of the Committee who has been certified as a ''Member'' within the meaning of § 325.2(l) of the regulations. Members must sign the Operating Agreement of the Committee in order to participate in the certified activities. Any U.S. company that is actively engaged in rice

milling or that has exported U.S. origin rice in the preceding or current calendar year and that wishes to participate in the activities covered by this certificate, may join the Committee's membership by executing the Operating Agreement and paying a one-time membership fee of $3,000. Any Committee member that is not a listed Member may join the Committee's export trade certificate of review by requesting that the Committee file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to the Committee, a copy of which the Committee will promptly transmit to the Secretary of Commerce and the Attorney General.

Protection Provided by Certificate

This Certificate protects the Committee, its Members, and directors, officers, and employees acting on behalf of the Committee and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits the Committee and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to the Committee by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of the Committee or its Members or (b) the legality of such business plans of the Committee or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 Fed. Reg. 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review has been granted to the Committee for the Fair Allocation of Rice Quotas.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 31, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–8580 Filed 4–3–97; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 96–00008.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the U.S. Rice Industry Coalition for Exports, Inc. (''U.S. RICE ''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1996).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Semi-milled and wholly milled rice, whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) (''milled rice''), husked rice (Harmonized Tariff Schedule 1006.20) (''brown rice''), broken rice (Harmonized Tariff Schedule 1006.40), and paddy or rough rice (Harmonized Tariff Schedule 1006.10).

Export Markets

For purposes of allocating through an open bidding procedure the European Union's tariff rate quota: The countries of the European Union.

For purposes of Export Trade Activities and Methods of Operation 2(c) and 4(e): All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. U.S. RICE will administer a system for managing the U.S. share of the European Union (''EU'') tariff-rate quotas (''TRQs'') for milled, brown, and broken rice (roughly 38,000 metric tons of milled rice, 8,000 metric tons of brown rice and 7,000 metric tons of broken rice annually) agreed to as compensation to the United States for the enlargement of the EU to include Austria, Finland, and Sweden, as follows:

a. U.S. RICE will allocate the TRQs exclusively through an open tender to the highest bidder(s). Any person domiciled, incorporated or otherwise legally established in the United States is eligible to bid. Bidders need not be members of U.S. RICE and need not be included as Members in this Certificate.

b. U.S. RICE will retain an independent third party (''the TRQ Administrator'') to administer the quota tender system. The TRQ Administrator may be an individual, partnership, corporation (for profit or non-profit), or any representative thereof that is not engaged in the production, milling, distribution, or sale of milled, brown, broken, or paddy rice.

c. At least 45 days before the opening of each TRQ tranche, as defined by the EU, the TRQ Administrator will publish notice of the bidding process for that tranche in the Journal of Commerce. The notice will invite independent bids and

specify a bid date that is (i) at least 5 working days after the notice is published and (ii) at least 30 days before the opening of the tranche. (If the EU announces the opening of a TRQ tranche less than 45 days before the opening of that tranche, the TRQ Administrator will publish the required notice within 2 working days of the EU announcement and specify a bid date that is at least 5 working days after the notice is published.) Each bidder will independently submit its bid to the TRQ Administrator on the published bid date, together with a bid deposit, initially set at $25 per metric ton. The TRQ Administrator will retain the full deposit for the tonnage on which bids are successful, and up to 25 percent of the deposit for the tonnage on which bids are not successful, to cover costs of administering the TRQ system. The remainder of the deposit on an unsuccessful bid will be refunded to the bidder.

d. Following the close of the bidding, the TRQ Administrator will promptly review the bids for conformity with bidding procedures, and will notify the high bidder(s) winning TRQ allocations. The high bidder(s) will then have 48 hours to post a five percent performance bond. Upon receipt of the amount bid from a high bidder, the TRQ Administrator will promptly issue Export Certificate(s) of Quota (''ECQs'') for the tonnage awarded. ECQs will be freely tradable. Each performance bond will be discharged on submission of export documentation demonstrating that the ECQ was used to export U.S. rice to the EU.

e. The TRQ Administrator will notify all participants in the bidding process of (i) the total tonnage for which ECQs were awarded, and (ii) the price per metric ton of the highest bid, for each TRQ.

2. The bid proceeds will be distributed and otherwise used as follows:

a. All bid proceeds will be deposited in a trust fund. Each year, the TRQ Administrator will distribute funds from the tenders for a particular quota year to qualifying members of U.S. RICE in proportion to each such member's percentage share by volume of total exports of U.S. rice to all destinations in the year preceding the quota year. No U.S. RICE member may receive a distribution in excess of that amount.

b. Any person domiciled, incorporated, or otherwise legally established in the United States that has exported U.S. rice in the year of application or the preceding calendar year, or is actively engaged in rice milling in the United States may join U.S. RICE. Prospective members must execute the U.S. RICE Operating Agreement. A member of U.S. RICE will qualify for a particular distribution by (i) joining U.S. RICE, and (ii) documenting its share of U.S. rice exports for the relevant year to the TRQ Administrator.

c. Funds remaining in the trust fund after a distribution will be used as necessary to cover operating expenses, and thereafter for promotion of U.S. rice exports worldwide through activities generally comparable to those funded by the U.S. Department of Agriculture's market access program.

3. The TRQ Administrator may, as necessary, receive confidential information and documentation of rice exports from members and prospective members of U.S. RICE in connection with membership applications and distributions of bid proceeds. The TRQ Administrator will maintain the confidentiality of such information and will not disclose it to any other member or any other person except to another neutral third party as necessary to process membership applications and distributions of bid proceeds.

4. U.S. RICE and/or its Members may also:

a. Exchange and discuss information regarding the structure and operation of the U.S. RICE TRQ management system, including the types of information regarding past export transactions that are necessary for implementing the system;

b. Assess the operation of the system and consider and implement modifications to improve the system's workability;

c. Exchange and discuss information concerning U.S. and foreign agreements, legislation, and regulations affecting the U.S. RICE TRQ management system;

d. Discuss and modify bid deposit fees as appropriate for covering costs of administering the TRQ system, and discuss and modify performance bond requirements as appropriate for securing timely submission of documentation of ECQ usage;

e. Discuss, decide on, and implement export promotion activities to be undertaken with post-distribution funds in the trust fund;

f. Otherwise exchange and discuss information as necessary to implement the foregoing activities and take the necessary action to implement the U.S. RICE TRQ management system, relating to the U.S.-EU Enlargement Agreement and any successor or related agreements, and related EU regulations;

g. Provide nonconfidential information to, and consult as appropriate with, officials of the U.S. Government and the European Commission concerning the operation of the U.S. RICE TRQ management system; and

h. Meet to engage in the activities described above.

Abbreviated Amendment Procedures

New U.S. RICE members may be incorporated as Members in the Certificate through an abbreviated amendment procedure. Under the procedure, U.S. RICE will notify the Secretary of Commerce and the Attorney General, in writing, of those members of U.S. RICE that wish to be included as Members in the Certificate. The notification will include a certification from each such member of its domestic and export sales of Products in its preceding fiscal year. Notice of the members so identified shall be published in the **Federal Register**. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not so amend the Certificate within 60 days of publication in the **Federal Register**, such amendment must be sought through the normal amendment procedure.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither U.S. RICE nor any Member shall intentionally disclose, directly or indirectly, to any other Member (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information regarding its or any other Member's costs, production, inventories, domestic prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (*e.g.*, price, time required to fill an order, etc.) of an actual or potential bona fide export sale and the disclosure is limited to the prospective purchaser.

2. U.S. RICE and its Members will comply with requests made by the Secretary of Commerce on behalf of the

Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

''Member'' means a member of U.S. RICE that has been certified as a ''Member'' within the meaning of § 325.2(l) of the Regulations, as listed in Attachment I. Any U.S. RICE member that is not a Member may request that U.S. RICE file for an amended certificate. A Member may withdraw from coverage under this certificate at any time by giving written notice to U.S. RICE, a copy of which U.S. RICE will promptly transmit to the Secretary of Commerce and the Attorney General.

Protection Provided by Certificate

This Certificate protects U.S. RICE, its Members, and directors, officers, and employees acting on behalf of U.S. RICE and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits U.S. RICE and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to U.S. RICE by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of U.S. RICE or its Members or (b) the legality of such business plans of U.S. RICE or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review has been granted to the U.S. Rice Industry Coalition for Exports, Inc.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 31, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

Attachment I

U.S. Rice Industry Coalition for Exports, Inc.

(Application No. 96–00008)

Continental Grain Company, New York, New York

Newfield Partners Ltd., Miami, Florida

[FR Doc. 97–8582 Filed 4–3–97; 8:45 am]

BILLING CODE 3510–DR–P

Technology Administration

Department of Commerce Study for the Continuous Improvement of the Advanced Technology Program (ATP)

AGENCY: Technology Administration, Commerce.

ACTION: Request for Public Comments ATP 60 Day Study.

SUMMARY: The Department of Commerce's Technology Administration is seeking ways to make the National Institute of Standards and Technology's (NIST) Advanced Technology Program (ATP) operate more effectively. This notice provides the general public the opportunity to review the areas under consideration. This study will be presented to the Secretary of Commerce.

DATES: The due date for submission of comments is May 5, 1997.

ADDRESSES: Address all comments concerning this notice to: National Institute of Standards and Technology, Program Office, Attention: ATP 60 Day Study, Administration Building, Room A1000, Quince Orchard & Clopper Roads, Gaithersburg, MD 20899–0001; or via e-mail to: atp60daystudy@nist.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Leslie Smith, (301) 975–6762.

SUPPLEMENTARY INFORMATION:

Background

The ATP is a rigorously competitive, cost-sharing R&D program to provide incentives for the pursuit of high-risk, emerging and enabling technologies by U.S.-based businesses at the early, precompetitive stage when market forces do not generally provide private capital. The ATP provides multi-year funding to single companies and business-led joint ventures. It encourages interactions and teaming arrangements between businesses and universities and national laboratories. The ATP challenges businesses to leverage the significant U.S. investment in fundamental research to generate the nuclei of new industries and new enabling technologies for the future growth and competitiveness of the U.S. industrial base. Competitions are held for both general programs, where any technology area can be explored, and for focused programs where industry discussions have indicated that significant progress in new areas can be made by a set of intensive R&D activities in a specific area of emerging technologies. In all cases proposers must provide credible evidence of the potential for new technology breakthroughs and outline project feasibility. In addition, they must be able to demonstrate their capability to bring a successful project to commercial reality *after* the completion of the ATP funding. Small technology-intensive and high tech start-up companies are particularly encouraged to participate. In the global economy of today, ATP is designed to accelerate and broaden the U.S. technology base and to provide the foundation for the next century's new, exciting industries. It should also serve as a vehicle for infusing truly new research ideas into existing industries for the next generation of products and services.

Purpose and Scope of Study

The Advanced Technology Program is a key component of the Nation's long term economic growth strategy. In a recent statement before a committee of the United States House of

Representatives, Secretary of Commerce William M. Daley stated that the Advanced Technology Program is critically important and provides enormous benefits to the United States' long-term economic prosperity. He noted that ATP projects planned, co-funded, and carried out by industry will play a special role in enabling technological developments that have long-term payoffs and widespread benefits for the economy.

Secretary Daley has instructed the Department of Commerce to review certain current policies and procedures of the ATP to determine if, after the six years of experience with the program, there are modifications that could further strengthen the program. In undertaking this review, the Department intends to consult with experts and interested parties, and to gather and analyze industry's experiences with the ATP. The outcome of this review will be incorporated in the Department's recommendations to the Secretary on possible modifications of the program which would increase its effectiveness.

Request for Public Comment

The Technology Administration has identified the following topics on which it requests public comments:

1. Company Participation

Companies, both large and small, participate in the program in ways that offer broad based benefits as well as specific technology developments. The program pays only direct costs of single applicants while any indirect costs are borne by the company. Awards to single applicants are currently limited to a maximum of two million dollars and a three year period. Single applicant proposals often involve teaming arrangements, including subcontractors and business alliances, that in many ways resemble joint ventures.

Joint ventures currently require the participation of two or more for-profit organizations which contribute to both the R&D and the cost share. Participants in joint ventures contribute at least half of the total costs and are allowed to apply for projects of up to five years duration and with no limit on funding. The appropriateness of the budget is one of the elements examined in determining the score of applicants.

The program currently solicits proposals in both general competitions, open to all areas of technology, and in focused programs. The ATP develops focused programs by a process which identifies where a coordinated set of public-private technology partnerships could solve a major technology challenge lending to economic benefits to the U.S.

Issues for comment include:

—Should large companies only participate as members of joint ventures or in other teaming arrangements?

—Should large companies who are single applicants be required to contribute a monetary cost share where current rules require them to pay only their indirect costs?

—Should the program simplify the rules by paying direct costs for both single applicants and joint ventures?

—Should teaming arrangements which do not meet the ATP requirements for joint venture funding but which apply as single applicants be allowed the same flexibility as joint ventures in the size and duration of their projects?

—Are there models for teaming arrangements other than these joint ventures that would work effectively for the ATP?

—Are there other advantages of the team building process involved in developing focused programs that are seen by industry as separate from the benefits of the specific ATP projects?

—What are the appropriate criteria to judge whether greater benefit would accrue by extending an existing focused program or by initiating a new one?

—Should participation in focused programs be limited to one competition after which further proposals would be evaluated as part of general competitions?

2. Private Capital Markets

ATP projects are directed to high risk, enabling research and development that are typically conducted five to ten years before product commercialization. Such projects would not normally be able to secure private financing because of the long term nature of the work, the high risk, and the inability of any single investor to capture the wide range of potential technology uses from the early stage R&D.

—What are the possible sources of private funding available for such projects and how could those sources be made available to potential program applicants?

3. Regional Distribution of Awards

Awards from the program are currently made on the basis of business and technical merit without regard to the geographic location of the participants. Some regions of the country have not received significant assistance from the program because they lack large numbers of R&D intensive companies.

—Are there mechanisms that the Department should explore to foster high quality proposals from companies in States that lack large numbers of R&D intensive companies?

—Should a separate program be set up specifically to aid States that are under-represented in the ATP and should it also apply to under-represented States in other Federal R&D programs?

4. Other Assistance to Applicants

The program holds conferences and workshops to explain the goals and requirements of the program to potential applicants. Proposal requirements are kept to a minimum but larger, more experienced companies may be able to write effective proposals more easily.

—What additional information could ATP provide to potential applicants, particularly smaller companies, that would assist them in developing proposals?

—Should the ATP provide information to unsuccessful applicants about other possible sources of financial assistance to pursue R&D that is judged meritorious?

Dated: March 31, 1997.

Mary L. Good,

Under Secretary for Technology.

[FR Doc. 97–8608 Filed 4–3–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Form: Defense Export Loan Guarantee (DELG) Program Application, DD Form 2747, OMB Number 0704–0391.

Type of Request: Extension.

Number of Respondents: 20.

Responses Per Respondent: 1.

Annual Responses: 20.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 20.

Needs and Uses: This collection of information is necessary to review and process applications for loan guarantees issued under 10 U.S.C. 2540 for defense exports. Respondents are defense suppliers of exporters, lenders, or nations, who are requesting a DoD

guarantee of a private sector loan in support of the sale or loan terms lease, to certain eligible countries, of U.S. defense articles, services, or design and construction services. The completed form will enable the department to determine whether the proposed transaction meets statutory guidance for program implementation.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 31, 1997.

Patrica L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–8563 Filed 4–3–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force Advanced Modeling and Simulation for Analyzing Combat Concepts in the 21st Century

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Modeling and Simulation for Analyzing Combat Concepts in the 21st Century will meet in closed session on April 21–22, 1997 at USACOM, JTASC, 116 Lakeview Parkway, Suffolk, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address modeling and simulation capabilities required for analyzing concepts for 21st century military combat operations. These capabilities should encompass the breadth of warfare from strategic to individuals fighting afoot for all phases of military operations (Air, Land, Sea, Information, Communications).

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c) (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–8609 Filed 4–3–97; 8:45 am]

BILLING CODE 5000–4–M

Department of the Army

Final Environmental Impact Statement (FEIS) for the Relocation of the U.S. Army Military Police School and the U.S. Army Chemical School to Fort Leonard Wood, Missouri

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA) and the President's Council on Environmental Quality (CEQ), the Army has prepared an FEIS for the directed relocation of the U.S. Army Chemical School and U.S. Army Military Police School from Fort McClellan, Alabama, to Fort Leonard Wood, Missouri. The relocation is part of the approved 1995 Base Closure and Realignment actions mandated by the Base Closure and Realignment Act of 1990 (Pub. L. 101–510), and subsequent actions in compliance with this law. Therefore, the FEIS focuses on alternative methods of implementing these BRAC actions at Fort Leonard Wood. The FEIS describes the proposed action which involves the relocation of military mission activities, construction of support facilities, and relocation of personnel to Fort Leonard Wood.

Alternatives considered for realignment of the BRAC training missions include the: No. Action Alternative; Relocate Current Practice (RCP) Alternative; Optimum Training Method (OPTM) Alternative; and the Environmentally Preferred Training Method (EPTM) Alternative. Alternatives considered for providing required support facilities include the No Action Alternative, and three land use and facility siting implementation alternatives. The final element of the planned action, realignment of associated personnel, is considered in the context of a: No Action Alternative; and Total Early, Total Late, and Phased Move Alternatives. The Army has identified their Preferred Action in the FEIS which includes implementation of the OPTM Alternative for realigning training missions, the Combined Headquarters and Instruction Land Use and Facility Plan Alternative to provide required support facilities, and the Phased Move Alternative to relocate personnel from Fort McClellan.

Based on the analysis included in this FEIS, adverse impacts that would occur as a result of implementing the Army's proposed BRAC actions at Fort Leonard Wood include: A reduction of air quality as a result of fog oil obscurant training; training activities and tree clearing that result in a ''may effect'' finding to Federally listed threatened and endangered species; the potential for loss of soil resources and accelerated erosion resulting from BRAC construction projects; the release of unburned fuel that could impact soil and water resources at the expedient flame range; and human health risks for trainers and military students involved with obscurant training. Beneficial impacts include increased operational efficiency and training effectiveness associated with the collocation of the Engineer School, the Military Police School and the Chemical School; short-term economic gains associated with BRAC construction activities; and long-term economic gains associated with the transfer of the Chemical School and Military Police School missions to Fort Leonard Wood.

FEIS Distribution and Waiting Period

Copies of the FEIS have been forwarded to Federal, State and local agencies; organizations; and individuals who provided substantive comments on the Draft EIS, or who previously requested a copy of the FEIS. These copies were distributed prior to, or simultaneously with, the filing of this Notice of Availability for the FEIS with the U.S. Environmental Protection Agency. Copies of the FEIS are available for review at the following public and other libraries: Kinderhook Regional Library, Lebanon, Missouri; Kinderhook Regional Library, Waynesville, Missouri; Rolla Public Library, Rolla, Missouri; Kansas City Public Library, Kansas City, Missouri; St. Louis County Library, Main Branch, St. Louis, Missouri; Clarke Engineer School Library, Fort Leonard Wood, Missouri; Texas County Library, Houston, Missouri; Daniel Boone Regional Library, Columbia, Missouri; Missouri River Regional Library, Jefferson City, Missouri; Springfield-Greene County Library, Springfield, Missouri; and Fisher Library, Fort McClellan, Alabama. Following a 30-day post-filing

waiting period, the Department of the Army will complete a Record of Decision (ROD).

Questions and Requests for FEIS

Questions regarding the FEIS, or a request for a copy of the document may be directed to Mr. Alan Gehrt at the Kansas City District, Corps of Engineers, 601 E. 12th Street, Kansas City, MO 64106-2896; phone: (816) 983-3142 or Telefax: (816) 426-2142.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I, L&E).

[FR Doc. 97–8166 Filed 4–3–97; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement [SEIS] for Remaining Construction of Main Stem Mississippi River Levees between Cape Girardeau, Missouri, and Head of Passes, Louisiana

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of Intent.

SUMMARY: The Corps of Engineers is undertaking the Mississippi River and Tributaries Project in order to provide flood protection from the ''project flood.'' As part of that project, the Corps has proposed enlarging levees and constructing berms and other appurtenances to provide that level of flood protection. The enlargement of remaining levees and appurtenant features within the boundaries of the Lower Mississippi Valley Division of the Corps would result in the loss of bottom-land hardwoods and forested wetlands and would have impacts on waterfowl and fisheries habitat. In order to determine the impacts of this element of the project, the Corps intends to prepare a SEIS. That SEIS will include an evaluation of the no-action alternative, completion of the original project plan, and alternative plans that incorporate various design features that reduce negative environmental impacts.

FOR FURTHER INFORMATION CONTACT: Marvin Cannon (telephone (601) 631–5437), CELMK–PD–Q, 4155 Clay Street, Vicksburg, Mississippi 39180–3435.

SUPPLEMENTARY INFORMATION: The Mississippi River and Tributaries Project was authorized by Congress in 1928. The project is designed to control a ''project flood'' with a discharge of 3 million cubic feet per second in the alluvial valley of the lower Mississippi River. A final Environmental Impact Statement for this project was filed with the Council on Environmental Quality on 8 April 1976.

1. Proposed Action: The proposed action is construction of the Mississippi River Mainline Levee Enlargement and Berm Construction Feature of the Mississippi River and Tributaries Project on the Mississippi River between Cape Girardeau, Missouri, and Head of Passes, Louisiana. As currently proposed, the recommended plan would include the use of some or all of the following alternative mitigation measures—avoiding significant resources, using relief wells to reduce the amount of borrow area and replace berms, using hydraulic dredges to obtain dredged material from the river for berm construction to reduce the amount of borrow area, using construction measures that allow either reforestation of lands or creation of high quality fisheries, reforesting some lands, and purchasing and reforesting agricultural lands.

2. Alternatives: Preliminary alternatives that will be evaluated include no-action, completion of the original plan, and a plan that incorporates environmental design features and results in no net losses to significant resources in the project area.

3. a. Public scoping meetings will be held at various locations within the project area. Initial public scoping meetings will be held in May or June 1997. The public will be notified of each of these meetings in advance. The studies will analyze impacts to significant environmental resources such as impacts to bottom-land hardwoods, wetlands, migratory birds, bats, water quality, endangered species, waterfowl, and fisheries. Public meetings to present the results of these studies and a recommended plan of action are scheduled to be held in February 1998 while the draft SEIS is under review by the public. In addition, workshops will be conducted to discuss issues, inform interested parties of the progress of the studies, and afford additional opportunity for public input. These workshops will be scheduled as needed and where most convenient for the analysis being conducted.

b. The draft SEIS is scheduled for public review in February 1998.

Gary W. Wright,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–8602 Filed 4–3–97; 8:45 am]

BILLING CODE 3710–PU–M

Department of the Army Corps of Engineers

Grant of Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(b)(1)(i), announcement is made of prospective exclusive licenses of the following foreign patent applications, each entitled ''Concrete Armor Unit to Protect Coastal and Hydraulic Structures and Shorelines.''

Country	Application No.	Filed
Peoples Republic of China	94192851.9	Aug. 17, 1994.
Indonesia	P–941654	Sep. 30, 1994.
Republic of Korea	95–703936	Aug. 17, 1994.
Republic of China	83108468	Sep. 14, 1994.
Malaysia	PI9402596	Sep. 29, 1994.
Argentina	333,588	Sep. 20, 1995.
Brazil	PCT/US94/09263.	May 27, 1996.
Chile	1518–95	Oct. 3, 1995.
Ecuador	SP–95–1552	Oct. 13, 1995.
France	(EP) 94926514.4	Aug. 17, 1994.
Italy	(EP) 94926514.4	Aug. 17, 1994.
Monaco	(EP) 94926514.4	Aug. 17, 1994.
United Kingdom	(EP) 94926514.4	Aug. 17, 1994.
Portugal	(EP) 94926514.4	Aug. 17, 1994.

DATES: Written objections must be filed not later June 3, 1997.

ADDRESSES: U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. ATTN: CEWES–OC.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Stewart (601) 634–4113, e-mail stewarp@exl.wes.army.mil

SUPPLEMENTARY INFORMATION: The Concrete Armor Unit was invented by Jeffrey A. Melby and George F. Turk. Rights to the patent applications identified above have been assigned to the United States of America as represented by the Secretary of the Army. The United States of America as represented by the Secretary of the Army intends to grant an exclusive license for all fields of use, in the manufacture, use, and sale in the territories and possessions, including territorial waters of each of the listed countries to SOGELREG-SOGREAH, 8P 172, 38042, Grenoble Cedex 9, France.

Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–8603 Filed 4–3–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangements

AGENCY: Department of Energy.

ACTION: Subsequent arrangements.

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of the Federative Republic of Brazil concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following retransfer: RTD/BR(EU)–10, for the transfer from the Republic of Germany to Brazil of 54,658 pieces of zircaloy-4 cladding tubes, weighing 42,852 kilograms, to be incorporated into uranium fuel assemblies, with an enrichment level between 1.9% and 3.2% of uranium-235, for ultimate use in the Angra-2 reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on March 31, 1997.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–8638 Filed 4–3–97; 8:45 am]

BILLING CODE 6450–01–P

Atomic Energy Agreements

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(CA)–13, for the transfer of 127.8 kilograms of unirradiated low enriched uranium fuel fabrication scrap, containing 25.241 kilograms of the isotope uranium-235 (19.75% enrichment), from AECL in Chalk River, Canada, to UKAEA in Dounreay, United Kingdom, for the purpose of recovering the uranium for return to Canada in the form of uranium metal pieces.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Dated: March 31, 1997.

For the Department of Energy.

Cherie Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 97–8639 Filed 4–3–97; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. ETEC–028]

Certification of the Radiological Condition of Building 028 at the Energy Technology Engineering Center Near Chatsworth, California

AGENCY: U.S. Department of Energy, Office of Environmental Restoration.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys and taken remedial action to decontaminate Building 028 located at the Energy Technology Engineering Center (ETEC) near Chatsworth, California. This property previously was found to contain radioactive materials from activities carried out for the Atomic Energy Commission and the Energy Research and Development Administration (AEC/ERDA), predecessor agencies to DOE. Although DOE owns the majority of the buildings and equipment, a subsidiary of Rockwell International, Rocketdyne, owned the land. Rocketdyne has recently been sold to Boeing North American Incorporated.

FOR FURTHER INFORMATION CONTACT: Don Williams, Program Manager, Office of Northwestern Area Programs, Office of Environmental Restoration (EM–44), U.S. Department of Energy, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: DOE has implemented environmental restoration projects at ETEC (Ventura County, Map Book 3, Page 7, Miscellaneous Records) as part of DOE's Environmental Restoration Program. One objective of the program is to identify and clean up or otherwise control facilities where residual radioactive contamination remains from activities carried out under contract to AEC/ERDA during the early years of the Nation's atomic energy program.

ETEC is comprised of a number of facilities and structures located within Administrative Area IV of the Santa Susana Field Laboratory. The work performed for DOE at ETEC consisted primarily of testing of equipment, materials, and components for nuclear and energy related programs. These nuclear energy research and development programs, conducted by Atomics International under contract to AEC/ERDA, began in 1946. Several buildings and land areas became radiologically contaminated as a result of facility operations and site activities. Building 028 is one ETEC area that has been designated for cleanup under the DOE Environmental Restoration Program. Other areas undergoing decontamination will be released as

they are completed and are verified to meet established cleanup criteria and standards for release without radiological restrictions as established in DOE Order 5400.5.

Building 028 is located in the north-central section of ETEC. The above-grade concrete slab is approximately 300 m^2 in area. The below-grade vault measures approximately 60 m^2 with 6 m (20 ft.) ceilings. Construction consists of a concrete slab floor with concrete walls and ceilings.

Building 028 was originally constructed to perform tests of space reactor shields using a fission plate driven by neutrons from the thermal column of a 50-kW swimming pool-type reactor. This reactor was designated the Shield Test Reactor and operated from 1961 to 1964, when it was replaced with another reactor design to operate at 1 MW. This latter configuration was named the Shield Test and Irradiation Reactor (STIR) and operated through 1972.

Following shutdown of the test program and removal of the reactor, the facility was decommissioned and made available for alternate use in March 1976.

In 1977, operations were started to investigate the behavior of molten uranium-oxide relative to simulated reactor accidents, in particular, its reaction with floor and structural materials. These experiments resulted in some recontamination of various parts of the building that were used for preparation and melting of the uranium-oxide. Tests continued intermittently into 1981. Some facility modifications were made, and a decision to terminate operations was made later in 1981. The building remained inactive, under periodic surveillance, until decontamination began in 1988.

To allow the release of Building 028 for use without radiological restriction, all detectable radioactive material/contamination was removed from the facility. This decontamination and decommissioning was performed in two phases, starting in 1975 (STIR facility) with the removal of the core tank, the activated concrete structures surrounding the core tank, thermal column, reactor shield, test vault carriage, water cooling systems, water shield door, and the partially dismantled exhaust system.

The second and final stage of decontamination of Building 028 began in 1988 and required slightly less than five months to complete.

Briefly, the decontamination steps involved in the second stage: (1) Removal of surplus normal and depleted uranium oxide; (2) decontamination and removal of equipment and electrical components, including the furnace system used for the uranium-oxide experiments; (3) removal of the radiologically contaminated ducting system; (4) building surfaces decontamination, including scabbling of the concrete floor in Room 101A; (5) final miscellaneous cleanup operations; and (6) final radiological survey of the building (above-grade and basement).

Rockwell/Rocketdyne performed a radiological survey in 1991. The Environmental Survey and Site Assessment Program of the Oak Ridge Institute for Science and Education performed independent verification of the decontamination project in 1993. Post-decontamination surveys have demonstrated that Building 028 is in compliance with DOE decontamination criteria and standards for release without radiological restrictions. The State of California Department of Health Services has concurred that the proposed release guidelines provide adequate assurance for release without further radiological restrictions. In the event of property transfer, DOE intends to comply with applicable Federal, State, and local requirements.

The external radiation exposure of the nine people directly associated with the STIR project, particularly the dismantling operations, during the period of September 23, 1975, through January 31, 1976, averaged 193 mrem, with a maximum individual exposure of 420 mrem. The entire operation was performed with a total radiation exposure of 1.7 man-rem.

None of the engineering or radiation and nuclear safety personnel assigned to the Building 028 decommissioning project received any measurable exposure to ionizing radiation.

Final costs for the decontamination of the STIR project were $134,922.

Final costs for the decontamination of Building 028 were $239,970.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. Copies of the certification docket will also be available at the following locations: DOE Public Document Room, U.S. DOE, Oakland Operations Office, the Federal Building, 1301 Clay Street, Oakland, California; California State University, Northridge, Urban Archives Center, Oviatt Library, Room 4, 18111 Nordhoff, Northridge, California; Simi Valley Library, 2629 Tapo Canyon Road, Simi Valley, California; and the Platt Branch, Los Angeles Public Library, 23600 Victory Boulevard, Woodland Hills, California.

DOE has issued the following statement of certification:

Statement of Certification: Energy Technology Engineering Center, Building 028

The U.S. Department of Energy, Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of Building 028 at the Energy Technology Engineering Center. Based on analysis of all data collected and the results of independent verification, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

Property owned by Boeing North American Incorporated:

Building 028, at the Energy Technology Engineering Center (situated within Area IV of the Santa Susana Field Laboratory), located in a portion of Tract ''A'' of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3, Page 7 of Miscellaneous Records of Ventura County.

Issued in Washington, DC, on March 27, 1997.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

Statement of Certification: Energy Technology Engineering Center, Building 028

The U.S. Department of Energy, Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of the Energy Technology Engineering Center Building 028. Based on this analysis of all data collected, the Department of Energy (DOE) certifies that the following property is in compliance with DOE decontamination criteria and standards. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

Property owned by Rockwell International Corporation:

Building 028, at the Energy Technology Engineering Center, located in a portion of Tract ''A'' of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3, Page 7 of Miscellaneous Records of Ventura County.

Certification:

Dated: January 23, 1997.

Roger Liddle,

Director, ERD.

[FR Doc. 97–8640 Filed 4–3–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–089]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Rheem Manufacturing Company From the DOE Furnace Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE or Department) test procedure regarding blower time delay for the company's GFD upflow residential, modulating type, gas-fired furnaces.

Today's notice also publishes a ''Petition for Waiver'' from Rheem. Rheem's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Rheem seeks to test using a blower delay time of 20 seconds for its GFD upflow residential, modulating type, gas-fired furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than May 5, 1997.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Codes and Standards, Case No. F–089, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0121, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT: Mr. Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0121, (202) 586–9138, or Mr. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces.

The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding Section 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. Title 10 CFR Part 430, Section 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. Title 10 CFR Part 430, Section 430.27 (g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On January 29, 1997, Rheem filed an Application for Interim Waiver and a Petition for Waiver regarding blower time delay. Rheem's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 20-second blower time delay when testing its GFD upflow residential, modulating type, gas-fired furnaces. Rheem states that the 20-second delay is indicative of how these furnaces actually operate. Such a delay results in an average of approximately 2.0 percent increase in AFUE. Since current DOE test procedures do not address this variable blower time delay, Rheem asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous Petitions for Waiver for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992; 59 FR 30577, June 14, 1994, and 59 FR 55470, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, 58 FR 68138, December 23, 1993, and 60 FR 62835, December 7, 1995; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, 56 FR 63945, December 6, 1991 and 61 FR 27057, May 30, 1996; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993, 59 FR 14394, March 28, 1994, and 60 FR 62832, December 7, 1995; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3,

1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992, 59 FR 12586, March 17, 1994 and 61 FR 17289, April 19, 1996; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992, and 61 FR 17887, April 23, 1996; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992, and 61 FR 4262, February 5, 1996; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, 59 FR 30578, June 14, 1994, and 61 FR 50812, September 27, 1996; and York International Corporation, 59 FR 46969, September 13, 1994, 60 FR 100, January 3, 1995, 60 FR 62834, December 7, 1995, and 60 FR 62837, December 7, 1995.

Thus, it appears likely that this Petition for Waiver for blower time delay will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Rheem an Interim Waiver for its GFD upflow residential, modulating type, gas-fired furnaces. Rheem shall be permitted to test its GFD upflow residential, modulating type, gas-fired furnaces on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(I) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(II) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Rheem's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Rheem seeks to test using a blower delay time of 20 seconds for its GFD upflow residential, modulating type, gas-fired furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. Pursuant to paragraph (b) of Title 10 CFR Part 430.27, DOE is hereby publishing the ''Petition for Waiver'' in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, on March 31, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

January 29, 1997.

Mr. Cyrus Nasseri,

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Mr. Nasseri: This is a petition for waiver and application for interim waiver submitted pursuant to title 10 CFR Part 430.27. Waiver is requested from the furnace test procedure as prescribed in appendix N to Subpart B of Part 430. The test procedure requires a 1.5 minute delay between burner and blower start-up. Rheem is requesting authorization to use a 20 second delay instead of 1.5 minutes for our series (-)GFD upflow residential, modulating type gas-fired furnace.

Rheem will be manufacturing these appliances with an electronic device that controls the blower operation on a timing sequence as opposed to temperature.

Improved energy efficiency is achieved by reducing on cycle losses. Under the Appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 12 second blower on time, allowing energy to be lost out of the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations.

The current test procedures do not give Rheem credit for the energy savings which averages approximately 2% Annual Fuel Utilization Efficiency (AFUE). This improvement is an average reduction of 20% of the normal on cycle energy losses. Rheem is of the opinion that a 20% reduction is a worthwhile energy savings.

Rheem has been granted previous waivers regarding blower on time to be used in the efficiency calculations for our (-)GEP, (-)GKA, (-)GRA, (-)GSA and (-)GTA series condensing furnaces and/or (-)GDE, (-)GLE, (-)GDG, (-)GLG, (-)GPH, (-)GLH, (-)GVH, and (-)GVG series furnaces. Several other manufacturers of gas furnaces have also been granted a waiver to permit calculations based on timed blower operation. Also, ASHRAE Standard 103–1993, paragraph 9.5.1.2.2 specifically addresses the use of a timed blower operation.

Confidential and comparative test data is available to you upon your request, confirming the above energy savings.

Manufacturers that domestically market similar products are being sent a copy of this petition for waiver and petition for interim waiver.

Sincerely,

Daniel J. Canclini,

Vice-President, Product Development and Research Engineering.

bcc: B.A. Cook, K. W. Kleman, R. W. Willis

[FR Doc. 97–8637 Filed 4–3–97; 8:45 am]

BILLING CODE 6450–01–P

State Energy Advisory Board, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: May 5, 1997 from 9:00 am to 5:00 pm, and May 6, 1997 from 9:00 am to 12:00 pm.

Place: The Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101. 206–623–8700.

Contact: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The FY1998 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Issues related to Electric Utility Industry restructuring and potential Federal legislation in this area.
- Review of the Board's Fifth Annual Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 28, 1997.

Gail R. Cephas,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 97–8641 Filed 4–3–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER97–2211–000]

Duke Power Company; Notice of Filing

March 31, 1997.

Take notice that on March 21, 1997, Duke Power Company tendered for filing a Notice of Termination of Wholesale Power Service to the Commissioners of Public Works of the City of Greenwood, South Carolina.

Any person desiring to be heard or 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 April 11, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8577 Filed 4–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–2212–000]

Duke Power Company; Notice of Filing

March 31, 1997.

Take notice that on March 21, 1997, Duke Power Company (''Duke'') tendered for filing a Network Integration Transmission Service Agreement and a Network Operating Agreement (''NOA'') between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and the Commissioners of Public Works of the City of Greenwood, South Carolina and Cinergy Services, Inc., acting as agent for the Commissioners of Public Works of the City of Greenwood, South Carolina (collectively, ''Transmission Customer''). Duke states that the NITSA and NOA set out the transmission arrangements under which Duke will provide the Transmission Customer Network Integration Transmission Service under Duke's Pro Forma Open Access Transmission Tariff.

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 Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 11, 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 proceedings. 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. 97–8578 Filed 4–2–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EC97–23–000 and EL97–32–000]

Morgan Stanley Capital Group Inc.; Notice of Filing

March 31, 1997.

Take notice that Morgan Stanley Capital Group Inc. (''MSCGI'') on March 25, 1997, tendered for filing a request that the Commission approve a disposition of facilities and/or grant any other authorization the Commission may deem to be needed under Section 203 of the Federal Power Act as a result of the forthcoming merger between Morgan Stanley Group Inc. (''MS''), MSCGI's parent, and Dean Witter, Discover & Co. (''DWD&Co.'').

Take notice that MSCGI on March 25, 1997, also tendered for filing a request for a declaratory order disclaiming jurisdiction over the merger of MSCGI's parent, MS, with DWD&Co. under Section 203 of the Federal Power Act.

MSCGI requests expedition and an order disclaiming jurisdiction by May 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8630 Filed 4–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–294–000]

Natural Gas Pipeline Company of America; Notice of Application

March 31, 1997.

Take notice that on March 19, 1997, Natural Gas Pipeline Company of America (Natural), located at 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP97–294–000 an application pursuant to Section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's Regulations. Natural seeks a certificate of public convenience and necessity authorizing the construction and operation of certain expansion facilities required by transport up to 663,000 Mcf per day of additional volumes on Natural's Amarillo mainline system east of Harper, Iowa, to the Chicago area. The details of Natural's application are more fully set forth in its filing which is on file with the Commission and open to public inspection.

Natural states that this application is being filed in response to the Draft Environmental Impact Statement (DEIS) for the ''Northern Border Project'' issued by the Commission Staff in Northern Border Pipeline Company (Northern Border), Docket Nos. CP95–194–001, 003, and Natural, Docket Nos. CP96–27–000, 001, and represents a further expansion of Natural's Amarillo Line. This application, in conjunction with Natural's already pending applications in Docket Nos. CP96–27–000 and 001, is said to put before the Commission, in a formal manner, the ''Amarillo System Alternative'' considered by the DEIS for the Northern Border Project. However, Natural states that 62 miles of large diameter lateral lines and 29,600 horsepower of additional compression which the Northern Border DEIS considered as part of the Amarillo System Alternative is not included because Natural says that those facilities are not needed. Thus, Natural states that its version of the Amarillo System Alternative is preferable to the Iowa/Illinois System Alternative which was also considered by the Northern Border Project DEIS.

Natural requests certificate authority for the following facilities:

(1) About 20.7 miles of 36-inch mainline loop in Washington and Louisa Counties, Iowa, extending westward from the beginning of the 36-inch loop proposed in Docket No. CP96–27–001;

(2) About 16.9 miles of 36-inch mainline loop in Rock Island and Henry Counties, Illinois, extending eastward from the end of the 36-inch loop proposed in Docket No. CP96–27–001 to the suction side of Compressor Station No. 110;

(3) About 68.9 miles of 42-inch mainline loop in Henry, Bureau and LaSalle Counties, Illinois, from the discharge side of Compressor Station No. 110 to the beginning of the No. 4 line in LaSalle County, Illinois;

(4) About 4.7 miles of 36-inch mainline loop in Bureau County, Illinois, extending eastward from the end of the 36-inch loop proposed in Docket No. CP96–27–001;

(5) Two 15,000 horsepower gas turbine compressors at Station No. 199 located in Muscatine County, Iowa;

(6) 19,000 horsepower of gas turbine compression at Station No. 110 located in Henry County, Illinois; and,

(7) One 13,000 horsepower gas turbine compressor at Station No. 113 located in Will County, Illinois.

The estimated cost of these facilities is $160 million.

Natural says that it will charge its currently effective rates under Rate Schedule FTS for the transportation service performed by the facilities proposed in this Application. Natural further requests a preliminary determination that the cost of the facilities should be reflected on a rolled-in basis in Natural's next Section 4 rate proceeding. The Commission's pricing policy statement in Docket No. PL94–4–000 indicates that there is a presumption in favor of rolled-in rates when the rate increase to existing customers from rolling-in the new facilities is five percent or less.

Natural says that, as shown in Exhibit N of its application, the rolling-in of the proposed facilities will have no significant impact on Natural's existing rates. While the impact on the rates for Natural's transportation services vary by transportation path, on a volume weighted basis, there is a slight overall reduction in rates. Similarly, Natural's storage rates will change by less than 0.3%. Natural claims to have thus met the requirements necessary for a preliminary determination in favor of rolled-in rates.

Natural says that Northern Border could contract with it for firm transportation service over the Amarillo System Alternative in lieu of constructing the Northern Border proposed expansion from Harper to Chicago.[1] Natural says that Northern Border would pay Natural's maximum rate under Rate Schedule FTS which is currently about 14 cents, and then Northern Border would charge its own shippers 8.5 cents per MMBtu under Northern Border's cost-of-service tariff.

Natural says that under the Amarillo System Alternative, Northern Border's system would be effectively extended east of Harper and that all the shippers would contract with Northern Border, not with Natural, for service to the Chicago area. Natural says that all the shippers would receive comparable or, in some cases, better service than they originally contracted for (in the precedent agreements), but at a lower per unit cost. Natural says that all this would be accomplished without the need for a totally new pipeline system/corridor being constructed across eastern Iowa and Illinois by Northern Border.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 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 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the 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 Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] Natural says that it made this offer to Northern Border on January 27, 1997, but that on February 7, 1997, Northern Border declined the offer and made no counter-proposal.

unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8575 Filed 4–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA97–553–000]

Ohio Edison Company, Pennsylvania Power Company; Notice of Filing

March 31, 1997.

Take notice that on February 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Supplement to the rate schedule to the Agreement for System Power Transactions with Citizens Lehman Power Sales. This filing is made pursuant to Section 205 of the Federal Power Act.

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 April 11, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8579 Filed 4–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–308–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

March 31, 1997.

Take notice that on March 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP97–308–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.211) for authorization to construct and operate a sales tap for an existing industrial chemical facility located in St. James Parish, Louisiana, under TGPL's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection

Transco states that the new sales tap will be used by Occidental Chemical Corporation (Occidental) for chemical manufacturing plant operations. Transco proposes to construct, install, own and operate the new sales tap and associated pipeline facilities consisting of a 6-inch hot tap near the 4.04 milepost on Transco's existing 12-inch Hester Lateral, a dual 2-inch meter run and 750 of associated pipeline. Transco states that Occidental will construct, or cause to be constructed, appurtenant facilities to enable it to receive up to 8,000 Mcf of gas per day from Transco on an interruptible basis. Transco states that the proposed facilities are estimated at $165,000 and that Occidental will cause Transco to be reimbursed for all costs associated with the facilities.

Transco states that the new sales tap is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The new sales tap will not have an effect on Transco's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8576 Filed 4–3–97; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2017–011 et al.]

Hydroelectric Applications [Southern California Edison Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: New Major License.

b. Project No.: 2017–011.

c. Date filed: February 26, 1997.

d. Applicant: Southern California Edison.

e. Name of Project: Big Creek No. 4 Hydroelectric.

f. Location: On the San Joaquin River, near Auberry, in Fresno, Madera, and Tulare Counties, California; on lands within the Sierra National Forest.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)–825(r).

h. Applicant Contact: C. Edward Miller, Manager of Hydro Generation Southern California Edison Co., 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. Brief Description of Project: The existing project consists of: (1) The Big Creek Dam No. 7 with the 465-acre reservoir; (2) the concrete intake structure; (3) the water conduit; (4) the concrete powerhouse; (5) two turbine generator units with a rated capacity of 50 MW each and the turbine generator unit with a rated capacity of 350 kW; (6) the tailrace; (7) the two 220-kV transmission lines, one 5.8-mile-long and one 81-mile-long; and (8) other appurtenances.

k. With this notice, we are initiating consultation with the *California State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

l. Under Section 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 11598–000.

c. Date filed: February 11, 1997.

d. Applicant: Ketchikan Public Utilities.

e. Name of Project: Carlanna Lake Hydroelectric.

f. Location: At Carlanna Lake, an existing reservoir owned by the applicant, on Carlanna Creek, near the city of Ketchikan, Ketchikan Gateway Borough, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: Mr. John Magyar, General Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.

i. FERC Contact: Surender M. Yepuri, P.E., (202) 219–2847.

j. Comment Date: June 2, 1997.

k. Description of Project: The proposed project would consist of: (1) A 340-foot-long, 31-foot-high concrete-faced dam; (2) a 250-foot-long spillway at crest elevation 520 feet (msl); (3) a reservoir with a surface area of 32 acres; (4) a 24-inch-diameter, 0.7-mile-long steel penstock; (5) a powerhouse with an installed capacity of 800 kW; (6) a tailrace; (7) a 34.5-kV, 0.25 mile-long transmission line connecting the project to the existing distribution system; and (8) other appurtenances.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 11599–000.

c. Date filed: February 11, 1997.

d. Applicant: Ketchikan Public Utilities.

e. Name of Project: Connell Lake Hydroelectric.

f. Location: At Connell Lake, an existing reservoir owned by the Ketchikan Pulp Company, on Ward Creek, near the city of Ketchikan, Ketchikan Gateway Borough, Alaska; on lands within the Tongass National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: Mr. John Magyar, General Manager, Ketchikan Public Utilities, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.

i. FERC Contact: Surender M. Yepuri, P.E., (202) 219–2847.

j. Comment Date: June 2, 1997.

k. Description of Project: The proposed project would consist of: (1) A 600-foot-long, 70-foot-high concrete dam with a gated spillway; (2) a reservoir with a surface area of 400 acres; (4) a 48-inch-diameter, 2,300-foot-long steel penstock; (5) a powerhouse with an installed capacity of 1,700 kW; (6) a tailrace; (7) a 115-kV, 200-foot-long transmission line connecting the project to the existing distribution system; and (8) other appurtenances.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Application Type: Request approval for dredging and new commercial marina.

b. Project No: 459–088.

c. Date Filed: January 22, 1997.

d. Applicant: Union Electric Company.

e. Name of Project: Osage Hydroelectric Project.

f. Location: Lake of the Ozarks, Morgan County, Missouri.

g. Filed Pursuant to: 18 CFR 4.200.

h. Applicant Contact: Ms. Barbara Skitt, Union Electric Company, 1901 Chouteau Avenue, St. Louis, MO 63166, (314) 554–3453.

i. FERC Contact: Steve Hocking, (202) 219–2656.

j. Comment Date: May 2, 1997.

k. Description of Application: Union Electric Company (licensee) requests Commission approval to grant a permit to Mr. Gene Gennetten of Ozark Barge & Dock Service for a new commercial marina able to accommodate up to 40 boats at any one time. The licensee also seeks Commission approval to grant Mr. Gennetten a permit to excavate up to 4,000 cubic yards of lakebed sediments to build the marina. The marina would be located at the Gravois Arm—Lake of the Ozarks, near lake mile 6.2 + 10.1, Section 17, Township 41 north, Range 17 west, Gravois Mills, Morgan County, Missouri.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. Type of Application: Surrender of Exemption.

b. Project No.: 9250–007.

c. Date Filed: March 18, 1997.

d. Applicant: Montana Natural Energy, Inc.

e. Name of Project: West Rosebud Creek.

f. Location: On the West Rosebud Creek, in Stillwater County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Jay P. Bingham, Bingham Engineering, 5160 Wiley Post Way, Salt Lake City, UT 84116, (801) 532–2520.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: May 12, 1997.

k. Description of Application: The exemptee seeks to surrender its exemption because it was not able to obtain a power sales contract for the unconstructed project.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

6 a. Type of Application: Non-Project Use of Project Lands and Waters.

b. Project Name: Catawba-Wateree Project.

c. Project No.: FERC Project No. 2232–340.

d. Date Filed: February 11, 1997.

e. Applicant: Duke Power Company.

f. Location: Mecklenburg County, North Carolina, Crown Harbor Subdivision on Lake Norman near Mooresville.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. FERC Contact: Brian Romanek, (202) 219–3076.

j. Comment Date: May 12, 1997.

k. Description of the filing: Application to grant an easement of 1.32 acres of project land to B.V. Belk Investments to construct a private residential marina consisting of 35 boat slips. The proposed marina would provide access to the reservoir for residents of Crown Harbor Subdivision. The proposed marina facility would consist of an access ramp and a floating slip facility. The slips would be anchored by using self-driving piles.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

7 a. Type of Filing: Request for Extension of Time to Commence Project Construction.

b. Applicant: Southeastern Hydro-Power, Inc.

c. Project No.: The proposed W. Kerr Scott Hydroelectric Project, FERC No. 6879–020, is to be located on the Yadkin River in Wilkes County, North Carolina.

d. Date Filed: March 12, 1997.

e. Pursuant to: Public Law 104–256.

f. Applicant Contact: Charles B. Mierek, President, Southeastern Hydro-Power, Inc., 5250 Clifton-Glendale Road, Spartanburg, SC 29307–4618, (864) 579–4405.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: May 15, 1997.

i. Description of the Requests: The licensee has requested that the exiting deadline for the commencement of construction of FERC Project No. 6879 be extended. The deadline to commence project construction would be extended to March 20, 2001. The deadline for completion of construction would be extended to March 20, 2005.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. Type of Application: Amendment of license (Delete minimum flow requirement).

b. Project No.: 3267–006.
c. Date Filed: September 26, 1994.
d. Applicant: Bellows-Tower Hydro, Inc.
e. Name of Project: Ballard Mill Project.
f. Location: The project is located on the Salmon River in the Town of Malone in Franklin County, NY.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).
h. Applicant contact: Frank O. Christie, P.E., Bellows-Tower Hydro, Inc., 8 East Main Street, Malone, NY 12953, (518) 483–1945.
i. FERC contact: John K. Hannula, (202) 219–0116.
j. Comment date: May 16, 1997.
k. Description of the Application: Bellows-Tower Hydro, Inc. (BTHI) request amendment of its license to eliminate the minimum flow required by article 29 of its project license. A minimum flow of 10 cubic feet per second (cfs) was established primarily to protect aesthetics at the old mill race channel, and secondarily to maintain aquatic habitat. BTHI no longer needs the minimum flow for aesthetic purposes.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. Type of Filing: Request for Extension of Time to Commence Project Construction.
b. Applicant : Potter Township Hydro Authority.
c. Project No.: The proposed Emsworth Hydroelectric Project, FERC No. 7041–042, is to be located on the Ohio River in Allegheny County, Pennsylvania.
d. Date Filed: February 24, 1997.
e. Pursuant to: Public Law 104–254.
f. Applicant Contact: Joseph J. Liberati, Esq., AAA Law Center, Suite 400, Three Wal Mart Plaza, Monaca, PA 15061, (412) 775–0341.
g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.
h. Comment Date: May 15, 1997.
i. Description of the Requests: The licensee has requested that the exiting deadline for the commencement of construction of FERC Project No. 7041 be extended to September 26, 1999. The deadline for completion of construction would be extended to September 26, 2001.
j. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E.,

Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 1, 1997, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8631 Filed 4–3–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5806–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for Drinking Water State Revolving Fund Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for Drinking Water State Revolving Fund Programs; OMB Control Number 2040–0185. 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 May 5, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1803.02.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for Drinking Water State Revolving Fund Programs (OMB Control No. 2040–0185; EPA ICR No. 1803.02). This is a request for a currently approved collection.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 authorize the creation of State Revolving Fund (DWSRF) programs in each state and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with the SDWA requirements and to protect public health. SDWA authorizes the U.S. Environmental Protection Agency (EPA) to award capitalization grants to the States and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems.

The information collection activities will occur primarily at the program level through the Capitalization Grant Application/Intended Use Plan, Biennial Report, Annual Audit and Assistance Application Review.

The State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use the program funds. The agreement is an instrument by which the State commits to manage its revolving fund program.

The State must agree to complete and submit a Biennial Report on the uses of the fund. The report indicates how activities financed contribute toward meeting the goals and objectives and provides information on loan recipients, loan amounts, loan terms, project categories of eligible costs, and similar data on other forms of assistance.

The State must also agree to conduct or have conducted a separate audit of its DWSRF. The audit report will contain an opinion on the financial statements of the DWSRF, a report on its internal controls, and a report regarding whether the compliance requirements have been met.

Also, since States provide assistance to local applicants, the States must review completed loan applications and verify that proposed projects meet all applicable federal and state requirements.

EPA will use the Capitalization Grant Application/Intended Use Plan, Biennial Report and Annual Audit to conduct its oversight responsibilities as mandated by the SDWA.

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 12/31/96 (FRL–5672–7); 3 comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1095 hours per State response and 80 hours per local community 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: State, local, and tribal governments.

Estimated Number of Respondents: 714.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 108,885 hours.

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. 1803.02 and OMB Control No. 2040–0185 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

And

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 31, 1997.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 97–8673 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5478–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed March 24, 1997 Through March 28, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970108, DRAFT EIS, NRCS, HI, Waimea-Paauilo Watershed Project, Alleviation of Agricultural Water Storage Problems for Crop Irrigation and Livestock Drinking Water, Funding, COE Section 404 Permit Issuance and Implementation, Hawaii County, HI, Due: May 19, 1997, Contact: Kenneth M. Kaneshiro (808) 541–2601.

EIS No. 970109, FINAL EIS, DOE, ID, NV, WA, MT, OR, WY, Wildlife Mitigation Program Standards and Guidelines, Implementation, Columbia River Basin, WA, OR, ID, MT, WY and NV, Due: May 05, 1997, Contact: Thomas C. McKinney (503) 230–4749.

EIS No. 970110, DRAFT EIS, COE, WA, Cedar River Section 205 Flood Damage Reduction Plan, Implementation, Renton, King County, WA, Due: May 19, 1997, Contact: Merri Martz (206) 764–3624.

EIS No. 970111, DRAFT EIS, AFS, OR, Summit Fire Recovery Forest Restoration Project, Implementation, Malheur National Forest, Long Creek Ranger District, Grant County, OR, Due: May 19, 1997, Contact: Robert Hammond (541) 575–3000.

EIS No. 970112, FINAL SUPPLEMENT, FHW, NB, US 275 Highway Reconstruction on New Alignment west of the existing US 275/N–36 Intersection to west of the existing US 275/N–64 (West Maple Road) Interchange near Waterloo, Funding, Douglas County, NB, Due: May 05, 1997, Contact: Edward W Kosola (402) 437–5521.

EIS No. 970113, DRAFT EIS, USA, IN, Camp Atterbury Training Areas and Facilities Upgrading, Implementation, Bartholomew, Brown, Johnson, Marion and Shelby Counties, IN, Due: May 19, 1997, Contact: Jack Fowler (812) 526–1169.

EIS No. 970114, FINAL EIS, COE, MN, IA, WI, 9-Foot Navigation Channel Project, Channel Maintenance Management Plan, Upper Mississippi River Head of Navigation to Guttenberg, IA, Implementation, MN, WI and IA, Due: May 19, 1997, Contact: Robert Whiting (612) 290–5264.

EIS No. 970115, DRAFT EIS, FTA, LA, Canal Streetcar Line Reintroduction, Canal Street from the Mississippi River to the Cemeteries, with a Spur Line to City Park, Funding, City of New Orleans, Orleans Parish, LA, Due: May 19, 1997, Contact: Peggy Crist (817) 860–9663.

EIS No. 970116, FINAL EIS, USA, MO, US Army Chemical School and US Army Military Police School Relocation to Fort Leonard Wood (FWL) from Fort McClellan, Alabama, Implementation, Cities of St. Robert, Waynesville, Richland, Dixon, Crocker, Rolla, Houston and Lebanon; Pulaski, Texas, Phelps and Laclede Counties, MO, Due: May 05, 1997, Contact: Alan Gehrt (816) 426–2142.

EIS No. 970117, FINAL EIS, TVA, VA, ADOPTION—United States Penitentiary, Lee, Pennington Gap, Funding, Lee County, VA, Due: May 05, 1997, Contact: Linda B. Oxendine (423) 632–3440. The US Tennessee Valley Authority (TVA) has adopted the US Department of Justice's, Bureau of Prisons FEIS #960500, filed with the US Environmental Protection Agency on 10–17–96. TVA was not a Cooperating Agency on this project. Recirculation of the document is necessary under Section 1506.3(b) of the Council on Environmental Quality Regulations.

EIS No. 970118, DRAFT SUPPLEMENT, AFS, CO, Vail Ski Area Category III Development Plan, Additional Information Concerning an Analysis of the Significance of Adopting Forest Plan Amendments, Implementation, Special-Use-Permit and COE Section 404 Permit Issuance, White River National Forest, Holly Cross Ranger District, Rocky Mountain Region, Eagle County, CO, Due: May 19, 1997, Contact: Loren Kroenke (970) 827–5715.

Dated: April 1, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–8703 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5478–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 17, 1997 through March 21, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Summary of Rating Definitions Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully

assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–AFS–L65279–ID Rating EO2, Musselshell Analysis Area, Implementation, Pierce Ranger District, Clearwater National Forest, Clearwater County, ID.

Summary: EPA expressed environmental objections about the cumulative effects of road construction, timber harvesting, grazing and other anthropogenic activities in the basin. There is insufficient information to evaluate project compliance with the Clean Water Act, the potential for proposed actions to further exacerbate existing ''impaired'' Musselshell Creek water quality and degraded aquatic habitat.

ERP No. D–AFS–L65282–OR Rating LO, Robinson-Scott Landscape Management Project, Timber Harvest and other Vegetation Management, Willamette National Forest, McKenzie Ranger District, Lane and Linn Counties, OR.

Summary: Our abbreviated review has revealed no EPA environmental concerns on this project.

ERP No. D–AFS–L65283–WA Rating LO, Long Draw Salvage Sale, Implementation, Okanogan National Forest, Tonasket Ranger District, Okanogan County, WA.

Summary: Our abbreviated review has revealed no EPA environmental concerns on this project.

ERP No. D–AFS–L82014–00 Rating LO, Priest Lake Ranger District Noxious Weed Control Project, Implementation, Idaho Panhandle National Forest, Bonner County, ID and Pend Oreille County, WA.

Summary: EPA believed that the alternatives are generally well described and there is adequate detail contained in the descriptions of the biochemical and herbicidal application proposed for use. EPA had no objection to the proposed action.

ERP No. D–GSA–E81037–FL Rating LO, 9300–9499 NW 41st Street Immigration and Naturalization Service Facility Consolidation, Development, Construction and Operation, Leasing, Dade County, FL.

Summary: EPA has no objection to the proposed action, although it was suggested that the final document provide additional information on pollution prevention.

ERP No. D–SFW–L91002–00 Rating LO, Programmatic EIS—Impact of Artificial Salmon and Steelhead Production Strategies in the Columbia River Basin, Implementation, WA, OR, ID, WY, MT, NV and UT.

Summary: Our abbreviated review has revealed no EPA environmental concerns on this project.

ERP No. D–USN–D11025–DC Rating EC2, Naval Sea Systems Command Headquarters (NAVSEA), Base Realignment and Closure Action, Relocation from Arlington, VA to Washington Navy Yard (WNY) in southeast Washington, DC.

Summary: EPA expressed environmental concerns regarding the historic preservation of buildings in the preferred alternative; the lack of information on environmental impacts associated with the demolition and renovation of buildings, and the need for mitigation to protect water quality of the Anacostia River.

ERP No. DS–COE–C36030–NJ Rating EC2, Green Brook Sub-Basin Flood Control Plan, Updated Information concerning a Revised Recommended Plan and Mitigation Plan, Implementation, Middlesex, Union and Somerset Counties, NJ.

Summary: EPA had environmental concerns about the project's potential impacts to wetlands and associated mitigation. EPA recommended that additional information be presented in the Final Supplement EIS to address these concerns.

Final EISs

ERP No. F–AFS–K61140–CA Dinkey Allotment Livestock Grazing Strategies, Implementation, Sierra National Forest, Fresno County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–K39040–CA San Diego County Water Authority Emergency Water Storage Project, Construction and Operation, COE Section 404 Permit and Permit Application, San Diego County, CA.

Summary:

Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FRC–L05214–WA

Priest Rapids Project (FERC No. 2114–024), Evaluation of Downstream Fish Passage Facilities, New License Issuance with Conditions to Protect the Migratory Juvenile Salmon (Smolts), Columbia River Basin, Grant County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–NOA–E91007–00 South Atlantic Region Shrimp Fishery Management Plan, Implementation, Additional Information, Amendment 2 (Bycatch Reduction), Exclusive Economic Zone (EEZ), NC, SC, FL and GA.

Summary: EPA supports five regulatory actions designed to improve the South Atlantic Shrimp Fishery and therefore has no objection to the proposed action. EPA recommended clarification of how Bycatch Reduction Devices might impact threatened and endangered sea turtles in Special Management Areas.

Dated: April 1, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–8704 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5806–8]

Clean Air Act Committee Mobile Source Technical Advisory Subcommittee Notification of Public Advisory Subcommittee Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Source Technical Advisory Subcommittee of the Clean Air Act Advisory Committee will meet on April 16, 1997 at 9:30 am to 4 pm (Eastern

Standard Time) located at the Key Bridge Marriott, 1400 Lee Highway, Arlington, VA 22209, 703–807–2000. This is an open meeting and seating will be on a first-come basis. During this meeting, the subcommittee will hear progress reports from its workgroups, approve its report to the Clean Air Act Advisory Committee, and be briefed on and discuss other current issues in the mobile source program.

Members of the public requesting further information should contact Mr. Philip A. Lorang, Designated Federal Official at (313) 668–4374, fax (313) 741–7821, or email Lorang.Phil @epamail.epa.gov; or Susan Romero, Mobile Sources Technical Advisory Subcommittee Management Officer, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 at (202) 260–4674, fax (202) 260–3730, or email Romero.Susan @epamail.epa.gov. Written comments of any length (with at least 20 copies provided) should be sent to the subcommittee no later than April 4, 1997.

The Mobile Source Technical Advisory Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 97–8674 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5805–9]

Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Sanitary Landfill Company (IWD) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of Settlement: in accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of a settlement concerning past response costs at the Sanitary Landfill Company (IWD) Superfund Site in Moraine, Ohio. This proposed agreement has been forwarded to the Attorney General for the required prior written approval for this Settlement, as set forth under section 122(g)(4) of CERCLA.

DATE: Comments must be provided on or before May 5, 1997.

ADDRESS: Comments should be addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of Sanitary Landfill Company (IWD) Superfund Site, Docket No. V–W–97–C–385.

FOR FURTHER INFORMATION CONTACT:

Karen L. Peaceman, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The following party executed binding certification of its consent to participate in the settlement: Eagle-Picher Industries, Inc.

This party will pay proceeds from a $67,222 bankruptcy claim for response costs related to the Sanitary Landfill Company (IWD) Superfund Site, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this notice.

U.S. EPA may enter into this settlement under the authority of section 122(h) of CERCLA. Section 122(h)(1) authorizes EPA to settle any claims under Section 107 of CERCLA where such claim has not been referred to the Department of Justice. Pursuant to this authority, the agreement proposes to settle with a party who is potentially responsible for costs incurred by EPA at the Sanitary Landfill Company (IWD) Superfund Site.

A copy of the proposed administrative order on consent and additional background information relating to the settlement, including a list of parties to the settlement, are available for review and may be obtained in person or by mail from Karen L. Peaceman, Mail Code C–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to this settlement for thirty days from the date of publication of this notice.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*

Thomas Mateer,

Acting Director, Superfund Division.

[FR Doc. 97–8675 Filed 4–3–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for Emergency OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted an emergency processing request for a proposed collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB approval has been requested by March 28, 1997.

The purpose for the emergency processing request is to obtain short-term emergency approval for the collection of information titled ''Progress Report'' and to reinstate the collection of information under the previously assigned OMB Control Number 3067–0151.

A notice published in **Federal Register** Vol. 62, No. 57, dated March 25, 1997, page 14142, describes and seeks comments on the proposed collection. FEMA will accept comments through May 27, 1997.

ADDRESSEE: Direct all comments on the request for emergency processing to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Victoria Becker-Wassmer, Washington, DC 20503, telephone number (202) 395–5871.

FOR FURTHER INFORMATION CONTACT: Contact Muriel B. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 26, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–8663 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1170–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1170–DR), dated March 21, 1997, and related determinations.

EFFECTIVE DATE: March 21, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 21, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding beginning on March 1, 1997, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dan Bement of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

The counties of Alexander, Gallatin, Hardin, Massac, and Pope for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–8664 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1163–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1163–DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include Categories C through G under the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997:

The counties of Anderson, Boyd, Butler, Caldwell, Campbell, Carter, Christian, Crittenden, Daviess, Elliott, Fayette, Fleming, Floyd, Gallatin, Greenup, Henderson, Henry, Hopkins, Jessamine, Kenton, Larue, Lawrence, Livingston, McCracken, McLean, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Ohio, Robertson, Rowan, Scott, Shelby, Spencer, Union, Webster, and Woodford for Categories C through G under the Public Assistance program (already designated for Individual Assistance, Hazard Mitigation, and Categories A and B under the Public Assistance program).

The counties of Boone, Grant, Hancock, and Washington for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–8667 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1169–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1169–DR), dated March 18, 1997, and related determinations.

EFFECTIVE DATE: March 18, 1997

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 18, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from a severe ice storm on January 12–17, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jim McClanahan of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Calcasieu, Cameron, and Jefferson Davis for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–8665 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1167–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1167–DR), dated

March 7, 1997, and related determinations.

EFFECTIVE DATE: March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include Categories C through G under the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 7, 1997:

The counties of Carroll, Cheatham, Dyer, Houston, Lauderdale, Madison, Obion, Stewart, and Weakley for Categories C through G under the Public Assistance program (already designated for Individual Assistance, Hazard Mitigation, and Categories A and B under the Public Assistance program).
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–8666 Filed 4–3–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

U.S. Government Guaranteed Loans and Sale Premiums; Rescission of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Rescission of policy statement.

SUMMARY: FFIEC has rescinded its policy statement on the Sale of U.S. Government Guaranteed Loans and Sale Premiums (Policy Statement), issued on November 29, 1979. The Policy Statement provided guidance to insured depository institutions purchasing or selling loans guaranteed by the U.S. government. The FFIEC rescinded the Policy Statement because it is outdated.

DATES: This Policy Statement was rescinded effective December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Federal Deposit Insurance Corporation (FDIC): William A. Stark, Assistant Director, (202/898–6972), Kenton Fox, Senior Capital Markets Specialist, (202/898–7119), Division of Supervision; Jamey Basham, Counsel, (202/898–7265), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Office of Thrift Supervision (OTS): Donna Deale, Manager, (202/906–7488), Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Office of the Comptroller of the Currency (OCC): Tom Rollo, National Bank Examiner, (202/874–5070), Office of the Chief National Bank Examiner, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board of Governors of the Federal Reserve System (FRB): Susan Meyers, Senior Securities Analyst, (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: FFIEC consists of representatives from the FDIC, OTS, OCC, FRB, and National Credit Union Administration (NCUA). FFIEC developed the Policy Statement to provide general supervisory guidance to insured depository institutions that originate, purchase, or sell loans guaranteed by the U.S. government. The Policy Statement also provided guidance on the accounting treatment of servicing fees and premiums associated with these loans. FFIEC originally adopted the Policy Statement on November 29, 1979, and the Federal Home Loan Bank Board (the OTS' predecessor), FDIC, OCC, and FRB federal banking agencies) each adopted the Policy Statement shortly thereafter. FFIEC adopted certain amendments to the Policy Statement on March 22, 1985, which were subsequently adopted by the federal banking agencies.

On December 5, 1996, FFIEC voted to rescind the Policy Statement. Since the Policy Statement was adopted, the market in government-guaranteed loans has become well established, and insured depository institutions have gained experience in dealing in this market. The supervisory guidance contained in the Policy Statement, which is very general in nature, is no longer necessary. Additionally, the accounting guidance in the Policy Statement is adequately addressed in the Instructions for Preparing Reports of Condition and Income and the Consolidated Statement of Condition of the Thrift Financial Report, and subsequent accounting pronouncements including Financial Accounting Standards Board Statement 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases.

For the above reasons, the Policy Statement has been rescinded. Each of the federal banking agencies will take appropriate action in connection with the recision of the Policy Statement.

Dated at Washington, DC, this 31st day of March, 1997.

Federal Financial Institutions Examination Council,

Joe M. Cleaver,

Executive Secretary.

[FR Doc. 97–8569 Filed 4–3–97; 8:45 am]

BILLING CODE 6210–01–P FRB, 6720–01–P OTS, 6714–01–P FDIC, 4810–33–P OCC

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.:
202–011259–012.

Title:
United States/Southern and Eastern Africa Conference.

Parties:
Empresa De Navegacao Internacional (Navinter) Lykes Bros. Steamship Co., Inc. Mediterranean Shipping Company S.A. Safbank Line, Ltd. (Safbank) Wilhelmsen Lines A/S.

Synopsis:
The proposed amendment restates the Agreement and deletes Eastern Africa from the geographic scope of the Agreement. It also makes changes to the Agreement's name and various Agreement articles to reflect this change. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: April 1, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–8634 Filed 4–3–97; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 97–06]

Shipman International (Taiwan) Ltd.; Possible Violations of Sections 8, 10(a)(1) and 10(b)(1) of the Shipping Act of 1984 and 46 C.F.R. Part 514

Order of Investigation and Hearing

Shipman International (Taiwan) Ltd. (''Shipman International'') is a tariffed

and bonded non-vessel-operating common carrier (NVOCC) located at 4th Floor, No. 89, Lane 155, Tun Hwa North Road, Taipei, Taiwan. Shipman International has held itself out as an NVOCC pursuant to its ATFI tariff FMC No. 004, filed September 5, 1993.[1]

Shipman International currently maintains an NVOCC bond, No. NVOC0143, in the amount of $50,000 with the American Motorists Insurance Company, 2 World Trade Center, New York, New York 10048. Pursuant to Rule 24 of its NVOCC tariff, Shipman International's tariff publisher, Distribution Publications Inc., serves as the U.S. resident agent for purposes of receiving service of process on behalf of Shipman International.

It appears that Shipman International, acting as shipper in relation to an ocean common carrier, misdescribed the commodity on numerous shipments transported by an ocean common carrier between December 1, 1995, and December 31, 1996.[2] The shipments primarily originated in Taiwan, and were destined for Los Angeles and other U.S. ports and points. In each of these instances, Shipman International was listed as shipper on the ocean carrier's bill of lading, while Shipman International destination agents in the U.S. acted as the consignee or notify party. Each shipment generally reflects that a Shipman International ''house'', or NVOCC, bill of lading was issued for tender by the ultimate consignee to Shipman International's agent upon arrival of the cargo at destination, which correctly describes the commodity shipped.

It further appears that the ocean common carrier rated the commodities in accordance with the inaccurate description furnished by Shipman International while the U.S. consignees of Shipman International's shipments accepted delivery of the cargo and made payment to the ocean common carrier on the basis of the lower rate attributable to the inaccurate commodity description shown on the bill of lading. Contemporaneous with the payment of any freight due to the ocean common carrier, Shipman International's agents in the U.S. also would issue arrival notices and obtain payment of the NVOCC's freight charges from the U.S. importer, in each case correctly describing the commodity based on actual contents shipped.

In addition, during time periods prior to the cancellation of Shipman International's ATFI tariff No. 004 in August 1996 and subsequent to the filing of Shipman International's ATFI tariff No. 005 in October 1996, Shipman International appears both as shipper and as a carrier issuing its own (Shipman International) NVOCC bill of lading with respect to the commodity being shipped. The rates assessed and collected by Shipman International and its U.S. agents for these shipments, however, bear no relation to the rates set forth in Shipman International's ATFI tariffs on file with the Commission.[3] Since Shipman International never modified its tariff rates during these respective periods, it would appear that all shipments for which Shipman International issued its NVOCC bill of lading during the above time periods may be found to constitute violations of section 10(b)(1) of the Shipping Act of 1984 (''1984 Act'').

During the period between August 24, 1996, when Shipman International canceled its tariff FMC No. 004, and October 18, 1996, when its replacement tariff FMC No. 005 became effective, it appears that Shipman International continued its business operations as an NVOCC without having an effective tariff on file for such services. During this period, Shipman International continued to act in the capacity of a shipper in relation to an ocean common carrier, to be identified on various Mitsui OSK Lines' bills of lading as the shipper for whose account the transportation was to be provided during this period, and to have such Mitsui bills of lading issued which reflect that freight charges had been prepaid to the ocean common carrier at origin. It thus appears that Shipman International operated as an NVOCC without an effective tariff on file for a period of 54 days. Each day of a continuing violation may be treated as a separate violation of the 1984 Act.

Section 10(a)(1) of the 1984 Act, 46 U.S.C. app. § 1709(a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10(b)(1) of the 1984 Act, 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Section 8 of the 1984 Act, 46 U.S.C. app. 1707, sets forth the requirement that each common carrier file and maintain with the Commission a tariff of its rates, rules and charges, while section 514.1 of the Commission's tariff regulations, 46 C.F.R. § 514.1, effectuates the above statutory mandate by prohibiting common carriers from operating without an effective tariff on file with the Commission. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations. Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year, while section 23 of the 1984 Act, 46 U.S.C. app. § 1721 provides for a similar suspension for NVOCCs in the case of violations of section 10(a)(1) of the 1984 Act.

Now therefore, it is ordered, that pursuant to sections 8, 10, 11, 13, and 23 of the 1984 Act, 46 U.S.C. app. §§ 1707, 1709, 1710, 1712, and 1721, an investigation is instituted to determine:

(1) Whether Shipman International violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining transportation at less than the rates and charges otherwise applicable through the means of misdescription of the commodities actually shipped;

(2) Whether Shipman International, in its capacity as a common carrier, violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting, or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff;

(3) Whether Shipman International violated section 8 of the 1984 Act and the Commission's tariff regulations at 46 C.F.R. § 514.1 by operating as a non-vessel-operating common carrier during

[1] Tariff FMC No. 004 expired August 24, 1996. It was subsequently replaced by tariff FMC No. 005, effective October 18, 1996.

[2] Based on import data available from the PIERS subsidiary of the Journal of Commerce, Shipman International has acted as shipper on over 550 inbound shipments during the twelve-month period ending November 1996, accounting for nearly 1100 TEUs of cargo. PIERS reports that the primary ocean common carrier transporting cargo on behalf of Shipman International was Mitsui OSK Line, which accounted for 91% of the total tonnage moved during this period. More than 100 of these shipments originated during the 54-day period in August–October 1996 when Shipman International did not have a tariff effective for its NVOCC services.

[3] Since filing its tariff No. 004 in the ATFI system in 1993, Shipman International has maintained a tariff consisting solely of three classes of Cargo N.O.S. rates, *i.e.* hazardous, non-hazardous and refrigerated, and a separate rate for Hardware N.O.S. Subsequent to the filing of its NVOCC tariff No. 005 in October 1996, Shipman International has maintained only three classes of Cargo N.O.S. rates. Shipman International does not publish ''per container'' rates, nor does it appear to charge those Cargo N.O.S. rates which it does publish, inasmuch as its rates are tariffed solely on a weight or measurement ton basis.

the period August 25, 1996 through October 18, 1996, without having a tariff for such services on file and effective with the Commission;

(4) Whether, in the event violations of sections 8, 10(a)(1) and 10(b)(1) of the 1984 Act and Commission regulations are found, civil penalties should be assessed against Shipman International and, if so, the amount of penalties to be assessed;

(5) Whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Shipman International should be suspended; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that Shipman International (Taiwan) Ltd. is designated as Respondent in this proceeding;

It is further ordered, that the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72;

It is further ordered, that all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.118, and shall be served on parties of record; and

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by March 31, 1998 and the final decision of the Commission shall be issued by July 29, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 97–8635 Filed 4–3–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 9, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8771 Filed 4–2–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010

AGENCY: Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010: Notice of Inaugural Meeting.

SUMMARY: The Department of Health and Human Services is providing notice of the first annual meeting of the Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010.

DATES: The Council will hold its meeting on April 21, 1997 from 9:30 a.m. to approximately 4:30 p.m. E.S.T.

ADDRESSES: Department of Health and Human Services, Sixth floor conference room, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Ellis Davis, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–2873.

SUPPLEMENTARY INFORMATION: The Council was established by charter on September 5, 1996 to provide assistance to the Secretary and the Department of Health and Human Services in the development of health promotion and disease prevention objectives to enhance the health of Americans by 2010. The Council will meet approximately once a year and will terminate two years from its charter date, unless renewed prior to its expiration.

The Council is charged to advise the Secretary on the development on national health promotion and disease prevention goals and objectives and to provide links with States, communities, and the private sector to ensure their involvement in the process of developing these goals and objectives. The Secretary of Health and Human Services chairs the Council, with the Assistant Secretary for Health as Vice Chair. Other members include the Operating Division Heads of the Department and the former Assistant Secretaries for Health. Management and support services are provided by the Office of Disease Prevention and Health

Promotion, Office of Public Health and Science, Office of the Secretary.

At its first meeting, the membership will establish procedures for conducting the business of the Council and for reporting the results of its meetings to the Secretary. Other items on the agenda include consideration of reports from Healthy People 2000 Consortium focus groups, discussion of data developments relevant to Healthy People 2010, and strategies for engaging the business community in the Department's prevention efforts. During its tenure, the Council will oversee the development of Healthy People 2010, the third generation of a national initiative to prevent disease and promote the health of the American people. It is anticipated that a call for submission by the public of health promotion/disease prevention objectives for 2010 will be published in the fall of 1997. At a second meeting proposed for spring of 1998, the Council will consider the resulting submissions as the basis for a draft of the 2010 objectives to be published in the fall of 1998.

If time permits at the conclusion of the formal agenda of the Council, the Chair may allow brief oral statements from interested parties and persons in attendance. The meeting is open to the public; however, seating is limited. If you will require a sign language interpreter, please call Gloria Robledo (202) 401–7736 by 4:30 p.m. E.S.T on April 7, 1997.

Dated: March 27, 1997.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 97–8598 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–17–M

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC); Human Subjects Subcommittee

On Saturday, April 12, 1997, in conjunction with National Bioethics Advisory Commission's April 13 meeting, the Human Subjects Subcommittee is now scheduled to meet from 2:00 to 5:00 p.m. at the Crystal City Marriott, Salon E, Jefferson Davis Highway, Arlington, VA. 22202. The meeting is open to the public. For public statements, please contact the person listed below.

For Further Information Contact: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: March 31, 1997.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director (Acting), National Bioethics Advisory Commission.

[FR Doc. 97–8596 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–17–P

National Committee on Vital and Health Statistics; Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Health Data Needs, Standards, and Security.

Times and Dates: 9:30 a.m.–6 p.m., April 15, 1997; 9 a.m.–5:30 p.m., April 16, 1997.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The law also requires the Secretary to adopt a number of supporting standards including standards for code sets and classifications systems. The Secretary is required to consult with the National Committee on Vital and Health Statistics (NCVHS) in complying with these provisions. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

To assist in the development of the NCVHS recommendations to HHS, the NCVHS Subcommittee on Health Data Needs, Standards, and Security has been holding a series of public meetings to obtain the views, perspectives and concerns of interested and affected parties. On the morning of April 15, the Subcommittee's Working Group on Data Standards and Security will hold a public meeting at which they will be briefed by HHS on the status of and plans for unique identifiers for providers and payers.

On the afternoon of April 15th and all day on April 16th, the full Subcommittee will consider and discuss perspectives on medical and clinical coding and classification issues in the implementation of Pub. L. 104–191. For the meeting, the Subcommittee is inviting specific organizations representing both the users and developers of medical and clinical classification systems to address the following questions in writing, to make brief oral presentations of their answers, and to answer further questions from the Subcommittee. Other organizations that would also like to submit written statements on these issues are invited to do so.

Questions to be Addressed:

1. What medical/clinical codes and classifications do you use in administrative transactions now? What do you perceive as the main strengths and weaknesses of current methods for coding and classification of encounter and/or enrollment data?

2. What medical/clinical codes and classifications do you recommend as initial standards for administrative transactions, given the time frames in the HIPAA? What specific suggestions would you like to see implemented regarding coding and classification?

3. Prior to the passage of HIPAA, the National Center for Health Statistics initiated development of a clinical modification of ICD–10 (ICD–10–CM) and the Health Care Financing Administration undertook development of a new procedure coding system for inpatient procedures (called ICD–10–PCS), with a plan to implement them simultaneously in the year 2000. On the pre-HIPAA schedule, they will be released to the field for evaluation and testing by 1998. If some version of ICD is to be used for administrative transactions, do you think it should be ICD–9–CM or ICD–10–CM and ICD–10–PCS, assuming that field evaluations are generally positive?

4. Recognizing that the goal of Pub. L. 104–191 is administrative simplification, how, from your perspective, would you deal with the current coding environment to improve simplification and reduce administrative burden, but also obtain medically meaningful information?

5. How should the ongoing maintenance of medical/clinical code sets and the responsibility, intellectual input and funding for maintenance be addressed for the classification systems included in the standards? What are the arguments for having these systems in the public domain versus in the private sector, with or without copyright?

6. What would the resource implications be of changing from the coding and classification systems that you currently are using in administrative transactions to other systems?

7. A Coding and Classification Implementation Team has been established within the Department of Health and Human Services to address the requirements of Pub. L. 104–191. Does your organization have any concerns about the process being undertaken by the Department to carry out the requirements of the law in regard to coding and classification issues? If so, what are those concerns and what suggestions do you have for improvements?

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff

Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Acting Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs.

Dated: March 26, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–8597 Filed 4–3–97; 8:45 am]

BILLING CODE 4151–04–M

Centers for Disease Control and Prevention

[30 DAY–3–97]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Congenital Syphilis Case Investigation and Report Form (CDC 73.126 REV 09–91)–(0920–0128). This request is for a 3-year extension of clearance. Reducing congenital syphilis (CS) is a national objective in the DHHS Report entitled *Healthy People 2000: Midcourse Review and 1995 Revisions.* Objective 19.4 of this document states the goal: ''reduce congenital syphilis to an incidence of no more than 40 cases per 100,000 live births'' by the year 2000. In order to meet this national objective, an effective surveillance system for CS must be continued in order to monitor current levels of disease and progress towards the year 2000 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts. The total annual burden hours are 500.

Respondents	Number of respondents	Number of responses/respondent (in hrs.)	Average burden/response (in hrs.)
State and local health department ..	2000	1	0.25

Dated: March 28, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–8618 Filed 4–3–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96E–0503]

Determination of Regulatory Review Period for Purposes of Patent Extension; XALATAN™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for XALATAN™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product XALATAN™ (latanoprost). XALATAN™ is indicated for the reduction of elevated intraocular pressure in patents with open-angle glaucoma and ocular hypertension who are intolerant of other intraocular pressure lowering medications or insufficiently responsive (failed to achieve target IOP determined after multiple measurements over time) to another intraocular pressure lowering medication. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for XALATAN™ (U.S. Patent No. 4,599,353) from the Trustees of Columbia University in the City of New York, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of XALATAN™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for XALATAN™ is 1,875 days. Of this time, 1,519 days occurred during the testing phase of the regulatory review period, while 356 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: April 20, 1991. The applicant claims April 18, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 20, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 16, 1995. The applicant claims June 14, 1995, as the date the new drug application (NDA) for XALATAN™ (NDA 20–597) was initially submitted. However, FDA records indicate that NDA 20–597 was submitted on June 16, 1995.

3. *The date the application was approved*: June 5, 1996. FDA has verified the applicant's claim that NDA 20–597 was approved on June 5, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,116 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8619 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0509]

Determination of Regulatory Review Period for Purposes of Patent Extension; PHOTOFRIN®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PHOTOFRIN® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PHOTOFRIN® (porfimer sodium). PHOTOFRIN® is indicated for palliation of patients with completely obstructing esophageal cancer, or of patients with partially obstructing esophageal cancer who, in the opinion of their physician, cannot be satisfactorily treated with neodymium:yttrium:aluminum:garnet (Nd:YAG) laser therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PHOTOFRIN® (U.S. Patent No. 5,145,863) from Health Research, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PHOTOFRIN® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PHOTOFRIN® is 4,065 days. Of this time, 3,441 days occurred during the testing phase of the regulatory review period, while 624 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: November 11, 1984. The applicant claims October 15, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 11, 1984, which was 30 days after FDA receipt of the IND on October 12, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: April 13, 1994. The applicant claims April 12, 1994, as the

date the new drug application (NDA) for PHOTOFRIN® (NDA 20–451) was initially submitted. However, FDA records indicate that NDA 20–451 was submitted on April 13, 1994.

3. *The date the application was approved*: December 27, 1995. FDA has verified the applicant's claim that NDA 20–451 was approved on December 27, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 915 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8621 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0507]

Determination of Regulatory Review Period for Purposes of Patent Extension; ACCOLATE®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ACCOLATE® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ACCOLATE® (zafirlukast). ACCOLATE® is indicated for the prophylaxis and chronic treatment of asthma in adults and children 12 years of age and older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ACCOLATE® (U.S. Patent No. 4,859,692) from Zeneca, Inc., and the Patent and Trademark office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ACCOLATE® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ACCOLATE® is 3,110 days. Of this time, 2,651 days occurred during the testing phase of the regulatory review period, while 459 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 24, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on March 24, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 26, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for ACCOLATE® (NDA 20–547) was initially submitted on June 26, 1995.

3. *The date the application was approved*: September 26, 1996. FDA has verified the applicant's claim that NDA 20–547 was approved on September 26, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,496 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997, for a determination regarding whether the applicant for extension acted with due

diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8622 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0020]

Determination of Regulatory Review Period for Purposes of Patent Extension; REMERON™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REMERON™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug REMERON™ (mirtazapine). REMERON™ is indicated for the treatment of depression. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REMERON™ (U.S. Patent No. 4,062,848) from Akzona Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 13, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of REMERON™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REMERON™ is 5,003 days. Of this time, 4,501 days occurred during the testing phase of the regulatory review period, while 502 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: October 5, 1982. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on October 5, 1982.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: January 30, 1995. The applicant claims April 29, 1994, as the date the new drug application (NDA) for REMERON™ (NDA 20–415) was initially submitted. However, FDA records indicate that the submission received on April 29, 1994, was withdrawn before filing. The actual NDA receipt date was January 30, 1995 (the date the fileable NDA was received at FDA), which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: June 14, 1996. FDA has verified the applicant's claim that NDA 20–415 was approved on June 14, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8623 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0441]

Determination of Regulatory Review Period for Purposes of Patent Extension; TRITEC®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TRITEC® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TRITEC® (ranitidine bismuth citrate). TRITEC® in combination with clarithromycin is indicated for the treatment of patients with an active duodenal ulcer associated with *H. pylori* infection. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TRITEC® (U.S. Patent No. 5,008,256) from Glaxo Wellcome, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patient's eligibility for patent term restoration. In a letter dated January 13, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TRITEC® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TRITEC® is 1,074 days. Of this time, 485 days occurred during the testing phase of the regulatory review period, while 589 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 1, 1993. FDA has verified the applicant's claim that the date that the investigation new drug application became effective was on September 1, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: December 29, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for TRITEC® (NDA 20–559) was initially submitted on December 29, 1994.

3. *The date the application was approved*: August 8, 1996. FDA has verified the applicant's claim that NDA 20–559 was approved on August 8, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 831 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8624 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0505]

Determination of Regulatory Review Period for Purposes of Patent Extension; MERETEK UBT™ Breath Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MERETEK UBT™ Breath Test and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs

(HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MERETEK UBT™ Breath Test (urea, C–13). MERETEK UBT™ Breath Test is intended for use in the qualitative detection of urease associated with *Helicobacter pylori* in the human stomach and as an aid in the diagnosis of *H. pylori* infection in adult patients. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MERETEK UBT™ Breath Test (U.S. Patent No. 4,830,010) from Meretekdiagnostics, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 21, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MERETEK UBT™ Breath Test represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MERETEK UBT™ Breath Test is 2,023 days. Of this time, 1,527 days occurred during the testing phase of the regulatory review period, while 496 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* March 7, 1991. The applicant claims January 19, 1990, as the date the investigational new drug application (IND) for MERETEK UBT™ Breath Test (IND 26,861) became effective. However, FDA records indicate that IND 26,861 was received by the agency on August 7, 1985. The protocol that first contained the Urea Breath Test was received by the agency on February 5, 1991, as part of this IND. Using February 5, 1991, as the beginning date plus adding 30 days for the receipt date of the modification, results in an effective date of March 7, 1991, for the testing phase of the active ingredient of this product.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* May 11, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for MERETEK UBT™ Breath Test (NDA 20–586) was initially submitted on May 11, 1995.

3. *The date the application was approved*: September 17, 1996. FDA has verified the applicant's claim that NDA 20–586 was approved on September 17, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 780 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8625 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97E–0014]

Determination of Regulatory Review Period for Purposes of Patent Extension; Astelin® Nasal Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Astelin® Nasal Spray and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color

additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Astelin® Nasal Spray (azelastine hydrochloride). Astelin® Nasal Spray is indicated for the treatment of the symptoms of seasonal allergic rhinitis such as rhinorrhea, sneezing, and nasal pruritus in adults and children 12 years and older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Astelin® Nasal Spray (U.S. Patent No. 5,164,194) from Astra Medica AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Astelin® Nasal Spray represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Astelin® Nasal Spray is 2,797 days. Of this time, 749 days occurred during the testing phase of the regulatory review period, while 2,048 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 8, 1989. The applicant claims February 6, 1989, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 8, 1989, which was 30 days after FDA receipt of the IND on February 6, 1989.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 26, 1991. FDA has verified the applicant's claim that the new drug application (NDA) for Astelin® Nasal Spray (NDA 20–114) was initially submitted on March 26, 1991.

3. *The date the application was approved*: November 1, 1996. FDA has verified the applicant's claim that NDA 20–114 was approved on November 1, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 349 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 3, 1997 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 1, 1997 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1997.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 97–8626 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Pretesting of Office of Cancer Communications Messages; Proposed Collection; Comment Request

Summary: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Pretesting of Office of Cancer Communications Messages.

Type of Information Collection Request: EXTENSION (OMB # 0925–0046, expires 8/31/97).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection diagnosis, and treatment to a wide variety of audiences and organizations (e.g. cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the Office of Cancer Communications (OCC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communications materials, and information services created by OCC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OCC is able to (1) Understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communications tools; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resources dollars wisely and effectively. *Frequency of Response:* On occasion. *Affected public:* Individuals or households; Businesses or other for

profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government. *Type of Respondents:* Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows: *Estimated Number of Respondents:* 13,780; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response;* 1458; and *Estimated Total Annual Burden Hours Requested:* 2,010. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or their forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ellen Eisner, Communications Research Manager, Health Promotion Branch, OCC, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–6667 or E-mail your request, including your address to EisnerE@occ.nci.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received by June 3, 1997.

Dated: March 27, 1997.

Nancie L. Bliss,

Project Clearance Liaison, NCI.

[FR Doc. 97–8595 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

A Comprehensive Alcohol Education Program for Pre-Adolescents Using Interactive Multimedia; Submission for OMB Review; Comment Request

SUMMARY: Under the provisions of Section 3506 © (2) (A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on March 22, 1996, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after September 28, 1997, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* A Comprehensive Alcohol Education Program for Pre-Adolescents Using Interactive Multimedia. *Type of Information Collection request:* NEW. *Need and Use of Information Collection:* The information proposed for collection will be used by the NIAAA to determine the efficacy of interactive multimedia for delaying the onset of drinking among 7th and 8th grade males and females. Interactive multimedia enables the combination of the elements of television and movies that engage and motivate the target populations with computer-based interaction, simulations, and games to (1) increase information about the negative consequences of teen drinking and (2) teach practical skills for avoiding and refusing alcohol. Subject participation will involve (1) focus groups, during development of the multimedia program, and (2) post-development behavioral trials.

Frequency of Response: On Occasion.

Affected Public: Pre-adolescents.

Type of Respondents: Minor Students (Grades 7th and 8th).

Estimated Number of Respondents: 308.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: .281.

And Estimated Total Annual Burden Hours Requested: 89.2.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Focus Group Subjects 40	1	40	0.5	20
Trial Subjects 268	4	1072	0.5	536

Total Number of Respondents: 308.

Total Number of Responses: 1112.

Total Hours: 556.

REQUEST FOR COMMENTS: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected;© the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Kendall Bryant, Prevention Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, Willco Building, Room 505, 6000 Executive Boulevard, MSC 7003, Bethesda, Maryland 20892–7003.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Kendall Bryant, Prevention Research Branch, Division of Clinical and Prevention Research (DCPR), NIAAA, NIH, Willco Building, Room 505, 6000 Executive Boulevard, MSC 7003, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–8820.

COMMENTS DUE DATE: Comments regarding this information collection are

best assured of having their full effect if received by May 5, 1997.

Dated: March 26, 1997.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 97–8594 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Genetic Testing for Cystic Fibrosis

Notice is hereby given of the NIH Consensus Development Conference on ''Genetic Testing for Cystic Fibrosis,'' which will be held April 14–16, 1997, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on April 14, at 8:30 a.m. on April 15, and at 9:00 a.m. on April 16.

At the beginning of this decade, a test was developed which could identify individuals who carried the genetic mutation associated with cystic fibrosis. Concerned that this test might be inappropriately or prematurely used, a number of genetic and health professional organizations issued recommendations on its use. These groups considered the circumstances under which the tests should be offered and the populations that would potentially benefit. In almost every case, recommendations were made against using the test for large-scale population-based screening until more sensitive tests were developed and more had been learned about the risks and benefits of genetic testing for individuals and their families. Several statements called for additional support for research on the educational, laboratory, counseling, ethical, and cost/benefit issues associated with the delivery of population-based screening for cystic fibrosis. Since that time new research has yielded a large body of new data on these issues.

This conference will bring together the research investigators, health care providers, epidemiologists, geneticists, ethicists and other experts, as well as representatives of the public, to present and discuss the latest data.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

—What is the current state of knowledge regarding cystic fibrosis natural history, epidemiology, genotype-phenotype correlations, treatment, and genetic testing in various populations?

—What has been learned about genetic testing for cystic fibrosis regarding (public and health professional) knowledge and attitudes, interest and demand, risks and benefits, effectiveness, cost, and impact?

—Should cystic fibrosis carrier testing be offered to: (1) individuals with a family history of cystic fibrosis; (2) adults in the preconception or prenatal period; and/or (3) the general population?

—What are the optimal practices for cystic fibrosis genetic testing (setting, timing, and the practices of education, consent, and counseling)?

—What should be the future directions for research relevant to genetic testing for cystic fibrosis and, more broadly, for research and public policy on genetic testing?

The primary sponsors of this meeting are the National Human Genome Research Institute and the NIH Office of Medical Applications Research. The conference is cosponsored by: the National Institute of Diabetes and Digestive and Kidney Diseases; the National Heart, Lung, and Blood Institute; the National Institute of Child Health and Human Development; the NIH Office of Rare Diseases; the National Institute of Mental Health; the National Institute of Nursing Research; the NIH Office of Research on Women's Health; the Agency for Health Care Policy Research; and the Centers for Disease Control and Prevention.

Advance information on the conference program and conference registration materials may be obtained from: Rose Salton, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, confdept@tech-res.com. The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning April 16, 1997 from the NIH Consensus Program Information Center, P.O. Box 2577, Kensington, Maryland 20891, phone 1–888–NIH–CONSENSUS (1–888–644–2667) and from the NIH Consensus Program site on the World Wide Web at http://consensus.nih.gov.

Dated: March 26, 1997.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 97–8593 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Meeting of the National Advisory Research Resources Council and its Planning Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR). This meeting will be open to the public as indicated below. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide a summary of the meeting and a roster of the members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Name of Committee: The Subcommittee on Planning of the National Advisory Research Resources Council.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room D, Natcher Building 45, Bethesda, Maryland 20892.

Open: May 22, 7:30 a.m.–8:45 a.m.

Purpose/Agenda: To discuss policy issues.

Name of Committee: National Advisory Research Resources Council.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Conference Room E1 and E2, Natcher Building 45, Bethesda, Maryland 20892.

Open: May 22, 9 a.m. until recess.

Closed: May 23, 8:30 a.m. until 9:45 a.m.

Open: May 23, 10:00 a.m. until adjournment.

Purpose/Agenda: Report of Center Director and other issues related to Council business.

Executive Secretary: Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Building 12A, Room

4011, Bethesda, MD 20892, Telephone: (301) 496–6023.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8591 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Standardized Assessment of Heart Failure in Population Studies.

Dates of Meeting: May 7, 1997.

Time of Meeting: 9:00 a.m.

Place of Meeting: Bethesda, Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Agenda: Discussion of standardized assessment of prevalence, incidence, and recurrence of heart failure in population studies for present and future studies.

Contact Person: Robin Boineau, M.D., NHLBI/DHVD, Two Rockledge Center, 6701 Rockledge Drive, Rm. 8158, MSC 7934, Bethesda, Maryland 20892, (301) 435–0455.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8586 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; 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 on Aging Special Emphasis Panel meeting:

Name of SEP: Postponed Aging in Drosophila (Teleconference).

Date of Meeting: March 31, 1997.

Time of Meeting: 2:00 p.m. to adjournment.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20892.

Purpose/Agenda: To review a program project.

Contact Person: Dr. James P. Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c) (4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8583 Filed 4–4–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse on May 13–14, 1997.

On May 13, from 9 a.m. to 4 p.m., the meeting will be held at the Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857. In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On May 14, from 9 a.m. to 5 p.m., the meeting will be held at the National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892. This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Dr. Teresa Levitin, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8584 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amened (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: Training Program in Endocrine and Metabolic Research.

Date: April 15, 1997.

Time: 10:30 AM.

Place: Room 6as–37E, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Francisco O. Calvo, Ph.D., Chief, Special Emphasis Panel Section, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.

Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Obesity/Nutrition Research Centers.

Date: April 24, 1997.

Time: 4:30 p.m.

Place: Room 6as–25F, Natcher Building, NIH, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.

Purpose/Agenda: To review and evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8585 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 15–16, 1997, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on May 15, for the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 15, from 8:30 a.m. to 11:00 a.m., and also closed on May 16, for the review, discussion, and evaluation of individual grant applications. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8589 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, Thursday, May 22, and Friday, May 23, 1997, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, May 22, from 10:30 a.m. to 3:00 p.m. for a status report by the Director, comments from Public Interest Groups, and a report from the Office of Research and Women's Health.

The meeting will be open again on Friday, May 23, from 8:30 a.m. until adjournment for a report on the NNA Program Review, a report on the Council Task Force on Minority Aging and a report from the Director of the National Center for Health Statistics. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on Thursday, May 22, from 3:00 p.m. to recess for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8590 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine, Notice of Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 15 and May 16, 1997, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 5:00 p.m. on May 15 and from 9:00 a.m. to approximately 12 noon on May 16 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 496–4441 in advance of the meeting.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 15, from approximately 1:00 p.m. to 2:00 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Harold M. Schoolman, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8588 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: April 4, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Name of SEP: Biological and Physiological Sciences.
Date: April 10, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4148, Telephone Conference.
Contact Person: Dr. Philip Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: April 16, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4214, Telephone Conference.
Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

Name of SEP: Clinical Sciences.
Date: April 18, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Clinical Sciences.
Date: April 23, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 24, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Biological and Physiological Sciences.
Date: April 28, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 6178, Telephone Conference.
Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Biological and Physiological Sciences.
Date: April 30, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 6178, Telephone Conference.
Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Clinical Sciences.
Date: April 30, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4106, Telephone Conference.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological Sciences.
Date: May 5, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Microbiological and Immunological Sciences.
Date: April 18, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4200, Telephone Conference.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

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 the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–8587 Filed 4–3–97; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will

be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999–LABS
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–0289/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197.

The following laboratory withdrew from the National Laboratory Certification Program on March 3, 1997: Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402.

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratory for the conduct of forensic urine drug testing required by Department of Transportation regulations: NOVAMANN (Ontario) Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–8311 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–49]

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:* June 3, 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 and Urban Development, 451—7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Tony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1871. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399. Fax inquiries may be sent to Mr. Johnston at (202) 708–1798. (Other than the ''800''

number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Guarantee Recovery Fund.

OMB Control Number, if applicable: 2506–0159.

Description of the need for the information and proposed use: To appropriately determine whether entities that submit applications for assistance under the Loan Guarantee Recovery Fund (Section 4 of the Church Arson Prevention Act of 1996) are eligible applicants and submit applications otherwise in compliance with the regulations, certain information is required. Among other necessary criteria, HUD must determine whether: (1) The financial institution is eligible as defined at 24 CFR Section 573.2 of the regulations; (2) the borrower is eligible as defined under 24 CFR Section 573.2; (3) the loan will assist in addressing damage or destruction caused by acts of arson or terrorism; (4) the activities which will be assisted by the guaranteed loans are eligible activities under § 573.3; (5) the financial institution utilizes sufficient underwriting standards; and (6) the assisted activities will comply with all applicable environmental laws and requirements.

Agency form numbers, if applicable: N/A.

Members of affected public: Financial institutions such as banks, trust companies, savings and loan associations, credit unions, mortgage companies, or other issuers regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency, Certain not-for-profit organizations affected by acts of arson or terrorism.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: A total of 300 respondents are expected and the total estimated burden hours is 12,240.

Status of the proposed information collection: The Department does not have a critical mass of respondents to serve as a source of information from which conclusions can be drawn with respect to the accuracy of its current estimates.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 1, 1997.

Jacquie Lawing,

General Deputy Assistant Secretary.

[FR Doc. 97–8632 Filed 4–3–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4175–N–02]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* May 5, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 31, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: HOPE VI Program Application Requirements (FR–4175).

Office: Public and Indian Housing.

OMB Approval Number: 2577–0208.

Description of the Need for the Information and its Proposed Use: The purpose of the HOPE VI Program is to enable the demolition of obsolete public housing developments or portions thereof, the revitalization (where appropriate) of sites (including remaining public housing units) on which such developments are located, replacement of housing for low-income families, and tenant-based assistance for the purpose of providing the replacement housing, and assisting tenants displaced by the demolition. The information collection application requirements submitted will be evaluated on the extent to which the proposal will lessen concentration of low-income residents, the quality of proposed self-sufficiency programs and management policies, the extent of

participation by the community and development partners, and the overall program quality.

Form Number: HUD–52825–A, HUD–2880, SF–424, and SF–LLL.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	200		1		40		8,000
Resident Consultation	200		1		4		800

Total Estimated Burden Hours: 8,800.

Status: Reinstatement, with changes.

Contact: Adrianne Todman-Wesby, (202) 401–8812 x4178; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 31, 1997.

[FR Doc. 97–8633 Filed 4–3–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4124–N–32]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 27, 1997.

Jacquie M. Lawing,

General Deputy Assistant Secretary.

[FR Doc. 97–8211 Filed 4–3–97; 8:45 am]

BILLING CODE 4210–29–

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1990–00]

Intent to Prepare an Environmental Impact Statement for the Revision of the Surface Management Regulations—43 CFR 3809 for Operations Under the Mining Law of 1872, as Amended

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) for the proposed revision of its regulations governing mining operations under the general mining laws. BLM invites comments and suggestions on the scope of the rulemaking and analysis. Specifically, BLM encourages the public to submit possible alternate language for the current definition of ''unnecessary or undue degradation'' and for current operational and reclamation requirements. We also ask that those who want to receive additional information send in a request to be placed on BLM's mailing list.

DATES: In order to be considered for preparation of the draft EIS, scoping comments are most useful if received on or before June 3, 1997. See the **SUPPLEMENTARY INFORMATION** section for the dates of scoping meetings.

ADDRESSES: Mail or hand-deliver written comments and requests to be put on the mailing list to Paul McNutt, 3809/EIS Team Leader, Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, NV 89502–2055. See the **SUPPLEMENTARY INFORMATION** section for the electronic access and filing address and for the locations of scoping meetings. Comments will be available for public review at the Harvard Way address from 7:45 a.m. to 4:15 p.m. Pacific time, Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul McNutt, (702) 785–6604 or via e-mail: pmcnutt@nv.blm.gov. An alternate contact is Scott Haight, (406) 538–7461 or via e-mail: shaight@mt1353.ldo.mt.blm.gov. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. Background and Description of Information Solicited

I. Public Comment Procedures

Your written comments should be specific; be confined to issues outlined in this notice; explain the reason for any recommended change; and where possible, reference the specific section or paragraph of the current regulations which you are addressing. BLM appreciates any and all comments, but those most useful and likely to influence decisions on the content of the EIS are those that either are supported by quantitative information or studies or include citations to and analyses of the applicable laws and regulations. BLM is particularly interested in receiving specific alternate language for existing regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. Comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section will not necessarily be considered or included in the administrative record.

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to: 3809EIS@wo.blm.gov. Please submit comments as an ASCII file and avoid the use of special characters or encryption. Please include your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact Mr. McNutt directly at (702) 785–6604.

Meetings

BLM will conduct scoping meetings on the following dates at the specified locations:

May 13—Cavanaugh's Inn at the Park, 303 N. River Drive, Spokane, WA
May 13—Colorado Room, Holiday Inn, 14707 W. Colfax Ave., Golden, CO
May 15—Pioneer Room, Carleson Center, 2010 Second Ave., Fairbanks, AK
May 15—Park Suite, Best Western Executive Park Hotel, 1100 North Central, Phoenix, AZ
May 20—Silver Legacy, 407 N. Virginia Street, Reno, NV
May 22—Pan American Room, Capitol Hilton, 16th and K Streets, NW, Washington, DC
May 28—Colonial Inn, 2301 Colonial Way, Helena, MT

BLM will conduct separate afternoon and evening meetings at each location, except for the Washington, DC location where we will hold only an afternoon meeting beginning at 1:00 p.m. BLM will hold the afternoon meetings from 1:30 p.m. to 3:30 p.m. local time and the evening meetings from 7:00 p.m. to 9:00 p.m. local time at each location. In Helena, the afternoon meeting will begin at 2:00 p.m.; in Fairbanks, the afternoon meeting will begin at 3:00 p.m.

The meeting sites for the public scoping meeting are accessible to individuals with disabilities. An individual with a disability who needs an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although BLM will attempt to meet a request received after this date, the requested accommodation may not be available.

II. Background and Discussion of Information Solicited

In a memorandum dated January 6, 1997, the Secretary of the Interior directed BLM to revise and update its Surface Management regulations (43 CFR part 3809) for operations under the Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*). This is a resumption of a rules revision effort that commenced in 1991, but was suspended in 1993 without publication of proposed rules, pending Congressional action that would have amended the Mining Law. Any regulatory changes would have been superseded and possibly incompatible with such legislative reform.

While the proposal to undertake comprehensive revisions to the Surface Management regulations was on hold, BLM did move forward to complete and implement specific Surface Management regulatory revisions, including the following final rules: Use and Occupancy of Mining Claims (July 16, 1996, 61 FR 37116), and Bonding (February 28, 1997, 62 FR 9093).

In the Secretary's direction to the BLM, he identified several areas of concern with the existing regulations. These include:

Definition of ''unnecessary or undue degradation.'' BLM contemplates revising the definition to more clearly require the use of ''best available technology and practices,'' local or State ''best management practices,'' or other similar technology-based standards appropriate in the conduct of hardrock mining.

Mining and reclamation performance standards. BLM currently does not have detailed performance addressing such areas as revegetation, contouring, and hydrology in the Surface Management regulations.

Notice level operations. For many hardrock mining operations that disturb 5 acres or less, the existing Surface Management regulations do not require advance approval of a plan of operations by BLM. Instead, an operator must provide BLM a ''notice'' which completely describes the operation and measures to protect the environment at least 15 calendar days before beginning activities on the site (43 CFR 3809.1–3). The task force is expected to propose at least three alternative ways of addressing this issue. One alternative would be to require all those intending to conduct mining to submit a plan of operations and receive BLM's approval before commencing operations (elimination of notice-level operations). A second alternative would be to narrow the scope of the notice provision; for example in areas of environmental sensitivity an operator planning to disturb 5 acres or less would have to submit a plan of operations and receive BLM's approval before commencing operations. A third alternative would be to tighten up the current notice provisions to better protect the environment, such as by requiring more information from an operator, allowing BLM more time to review a notice, and providing greater penalties for not meeting the requirements of the notice provisions.

Coordination with State regulatory programs. To ensure that the Federal Land Policy and Management Act's purpose of avoiding unnecessary or undue degradation is achieved, BLM would adopt rules that would minimize duplication and promote cooperation among regulators.

Issues tentatively identified for analysis in the EIS include impacts to:

Air and water resources;
Soils, vegetation, and topography;
Threatened and endangered species;
Cultural resources;
Fish and wildlife;
Exploration and mining activities; and
Local and regional economies.

Dated: March 31, 1997.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 97–8601 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–84–P

[AZ-950–57–77; AZA 28900]

Public Land Order No. 7251; Withdrawal of National Forest System Lands for State Highway 87 Roadside Zone; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 7,550 acres of National Forest System lands from location and entry under the United States mining laws for 20 years to protect the State Highway 87 Roadside Zone. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

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 National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the scenic values of the State Highway 87 Roadside Zone:

Gila and Salt River Meridian

Tonto National Forest

T. 7 N., R. 9 E.,
  Sec. 1, W½;
  Sec. 11, S½SW¼, and NE¼SE¼;
  Sec. 12, NW¼, and N½SW¼;
  Sec. 14, NW¼NW¼;
  Sec. 15, NE¼NE¼.
T. 8 N., R. 9 E.,
  Sec. 36, SE¼SW¼.
T. 8 N., R. 10 E.,
  Sec. 5, lot 3, E½SW¼NW¼, SE¼NW¼, W½NE¼SW¼, N½NE¼SW¼SW¼, and S½SE¼SW¼SW¼;

Sec. 7, E½SE¼NE¼, and SE¼;
Sec. 8, SW¼NW¼NW¼, and W½NE¼NW¼NW¼;
Sec. 17, SW¼SW¼SW¼;
Sec. 18, E½;
Sec. 20, W½;
Sec. 29, W½, and W½W½SE¼;
Sec. 31, lot 3, SE¼NE¼, NE¼SW¼, and NW¼SE¼;
Sec. 32, NW¼NW¼.
T. 9 N., R. 10 E.,
Sec. 3, lots 3 and 4, and S½NW¼;
Sec. 4, lots 1 to 4, inclusive, and S½N½;
Sec. 5, lots 1 and 2, S½NE¼, and SE¼;
Sec. 8, N½, and SW¼;
Sec. 9, E½, and E½SW ¼;
Sec. 10, NW¼;
S. 16, N½, and NW¼SW¼.
T. 9 N., R. 10 E.,
Sec. 17, W½, and SE¼SE¼NE¼;
Sec. 20, N½;
S. 32, W½.
T. 10 N., R. 10 E.,
Sec. 9, SE¼SW¼, and SW¼SE¼;
Sec. 16, E½, and E½E½W½;
Sec. 21, E½, and E½E½W½.
T. 10 N., R. 10 E.,
Sec. 22, W½SW¼NW¼, and W½NW½SW¼;
Sec. 28, NE¼, and S½;
Sec. 33, NW¼, and S½;
Sec. 34, SW¼.

The areas described aggregate 7,550 acres in Gila County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. 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: March 27, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–8627 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–32–P

[NV–930–1430–01; N–59269]

Realty Action: Sale of Public Lands in Nye County, Nevada, by Noncompetitive Sale Procedures

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

DATES: Comments must be submitted on or before May 19, 1997.

ADDRESSES: Submit comments to the District Manager, Battle Mountain Field Office, 50 Bastian Road, P.O. Box 1420, Battle Mountain, NV 89820.

SUMMARY: The following described land in Nye County, Nevada, has been examined and identified as suitable for disposal by direct sale, at the appraised fair market value, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 7 S., R. 44 E.,
Sec. 33, E½NE¼NE¼SE¼.

Comprising 5 acres, more or less.

The lands will be sold to the adjacent land owner, John R. Wellborn. The lands are hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Craggett, Realty Specialist, Bureau of Land Management, Battle Mountain Field Office, at (702) 635–4000.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal by the Esmeralda/Southern Nye Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency.

The locatable and salable mineral estates have been determined to have no known value. Therefore, the mineral estate, excluding leasable minerals, will be conveyed simultaneously with the surface estate in accordance with section 209(b)(1) of Federal Land Policy and Management Act of 1976. Acceptance of the sale offer will constitute application for conveyance of the available mineral interests. The sale proponent will be required to submit a $50.00 nonrefundable filing fee for conveyance of the mineral interests specified above with the purchase price for the land. Failure to submit the nonrefundable fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from date of this publication, whichever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945);
2. Leasable minerals (43 CFR 2430.5(a));

And will be subject to:

1. Those rights for highway purposes granted to the Nevada Department of Transportation, its successors or assigns, by right-of-way Nev-042808, pursuant to the Act of August 27, 1958;

2. Those rights for powerline purposes granted to Valley Electric Association, its successors or assigns, by right-of-way Nev-066116, pursuant to the Act of March 4, 1911; and

3. All other valid existing rights.

Should the sale proponent not purchase the parcel, the lands may remain for sale, over the counter, at the appraised fair market value, until the segregation terminates 270 days from publication of this Notice in the **Federal Register**. Interested parties may inquire about the parcel at the Bureau of Land Management, 50 Bastian Road, Battle Mountain, NV 89820, Monday through Friday, from 7:30 a.m. to 4:30 p.m.

Adverse comments submitted during the 45-day comment period will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: March 21, 1997.

Gerald M. Smith,

District Manager.

[FR Doc. 97–8600 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–HC–P

[CO–956–97–1420–00]

Colorado: Filing of Plats of Survey

March 27, 1997.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., March 27, 1997. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat representing the retracement of a portion of the Colorado-New Mexico boundary and the dependent resurvey of a portion of the Eighth Standard Parallel North (north

boundary), the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 6, 7, 18, and 19, T. 32 N., R. 9 W., New Mexico Principal Meridian, Group 1139, Colorado, was accepted February 20, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivisional lines of sections 1, 12, and 13, T. 32 N., R. 10 W., New Mexico Principal Meridian, Group 1139, Colorado, was accepted February 20, 1997.

These surveys were requested by the Colorado Department of Transportation for administrative purposes.

The plat representing the corrective resurvey of a portion of the subdivision of section 14, Fractional Township 51 N., R. 1 E., New Mexico Principal Meridian, Group 1094, Colorado was accepted March 19, 1997.

The plat (in three sheets) representing the dependent resurvey of portions of the subdivisional lines, the subdivision of sections 22 and 28, a resurvey of a portion of the north right-of-way of U.S. Highway No. 40, a metes-and-bounds survey of Lot 6 in Section 27 and Parcel A in section 28, and an informative traverse of the center line of a dirt road 20 ft. wide for an administrative easement in sections 22 and 27, T. 2 N., R. 77 W., Sixth Principal Meridian, Group 1091, Colorado, was accepted Feburary 20, 1997.

The amended field notes correcting a corner description for cor. No. 2, M.S. No. 13937, Mary McKiniry Lode located in the NW ¼ of sec. 7, T 1 N., R. 72 W., Sixth Principal Meridian, Group 875, Colorado, were accepted February 20, 1997.

The supplemental plat created to facilitate a land transfer in section 1., T. 11 S., R. 98 W., Sixth Principal Meridian, Colorado, was accepted March 19, 1997.

These surveys were requested by BLM for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 97–8570 Filed 4–3–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; procedures for the administration of Section 5 of the Voting Rights Act of 1965.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 3, 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact David H. Hunter 202–307–2898, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66128, Washington, DC 20035. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, may also be directed to Mr. Hunter.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 CFR Part 51.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: No form; Voting Section, Civil Rights Division.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State or Local Government. Other: None. Jurisdictions specially covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that voting changes are not racially discriminatory. The Procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 4,727 responses per year (10,103 respondents making an average of 0.47 responses per year), with the average response requiring 10.02 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 47,365 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: April 1, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–8599 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–13–M

Office of the Attorney General

[A.G. Order No. 2073–97]

RIN 1105–AA50

Proposed Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

AGENCY: Department of Justice.

ACTION: Proposed guidelines.

SUMMARY: The United States Department of Justice (DOJ) is publishing Proposed Guidelines to implement Megan's Law and to clarify other issues relating to compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

DATES: Comments must be received by June 3, 1997.

ADDRESSES: Comments may be mailed to Bonnie J. Campbell, Director, Violence Against Women Office, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202–616–8894.

SUPPLEMENTARY INFORMATION: Megan's Law, Pub. L. No. 104–145, 110 Stat. 1345, amended subsection (d) of section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L.

No. 103–322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071), which contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (hereafter referred to as the ''Jacob Wetterling Act'' or ''the Act''). The provisions of the Jacob Wetterling Act amended by Megan's Law relate to the release of registration information. The changes in these provisions require conforming changes in the Final Guidelines published by the Department of Justice on April 4, 1996 in the **Federal Register** (61 FR 15110) to implement the Jacob Wetterling Act. In addition, other changes in the Guidelines are necessary to resolve questions that have arisen in the Justice Department's review of state sex offender registration programs and discussion of compliance requirements with the states.

Megan's Law makes two changes in the Jacob Wetterling Act: (1) It eliminates a general requirement that information collected under state registration programs be treated as private data, and (2) it substitutes mandatory language for previously permissive language concerning the release of relevant information that is necessary to protect the public concerning registered offenders.

The time frame for compliance with the Megan's Law amendment to the Jacob Wetterling Act is the general time frame for compliance with the Act specified in section 170101(f) (42 U.S.C. 14071(f))—three years from the Act's original enactment date of September 13, 1994, subject to a possible extension of two years for states which are making good faith efforts to come into compliance with the Act. States that fail to comply with the Megan's Law provisions or other provisions of the Jacob Wetterling Act within the specified time frame will be subject to a mandatory 10% reduction of Byrne Formula Grant funding (under 42 U.S.C. 3756), and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance.

In addition to changes reflecting the Megan's Law amendment, these proposed guidelines include changes that clarify other provisions of the Jacob Wetterling Act. Since the publication of the original Guidelines for the Act, a large majority of the states have submitted enacted or proposed sex offender registration provisions to the Department of Justice for preliminary review concerning compliance with the Act. This review process has raised a number of questions which indicate that additional guidance would be helpful. This proposed revision of the Guidelines attempts to address these questions. The main changes or additional clarifications concern the following issues:

1. The Jacob Wetterling Act provides that registration information is initially to be taken and submitted by ''the court'' or a ''prison officer.'' 42 U.S.C. 14071(b) (1) & (2). The purpose of this requirement is to ensure that a responsible official will obtain registration information near the time of release and transmit it to the registration agency. Some states assign this responsibility to probation or parole officers, who have functions relating to correctional matters or the execution of sentences, but who might not be regarded as prison officers or courts on a narrow reading of those terms. The revised guidelines make it clear that such assignments of responsibility to such officers are permissible under the Act.

2. The Act provides that, if a person required to register is released, then the responsible officer must obtain the registration information and forward it to the registration agency within three days of receipt. 42 U.S.C. 14071(b)(2). Many states, however, do not wait until the day of release to obtain registration information, but require offenders to provide this information some period of time (e.g. 30 days or 60 days) prior to release. The revised guidelines make it clear that, under the latter type of procedure, it is adequate if the registration information is forwarded no later than three days after release because that equally ensures the submission of registration information within the time frame contemplated by the Act.

3. As noted above, the Act requires that a responsible officer obtain and transmit the initial registration information. Some states provide that the responsible officer is to send the initial registration information concurrently to the state registration agency and to the appropriate local law enforcement agency, as opposed to transmitting the information exclusively to the state registration agency, which would then forward it to the appropriate local law enforcement agency. The revised guidelines make it clear that the concurrent transmission approach is allowed because that approach also results in the availability of the registration information at the state and local levels as contemplated by the Act.

4. The Act requires registrants to report changes of address within 10 days. 42 U.S.C. 14071(b)(1)(A). Most state registration programs do not require registrants to send change of address information directly to the state registration agency but provide that this information is to be submitted to a local law enforcement agency or other intermediary, which is then required to forward it to the state registration agency. The revised guidelines make it clear that providing for the submission of change of address information in this manner (through an intermediary) is allowed under the Act. Likewise, a state could provide for the submission of initial registration information by the responsible prison officer or court through an intermediary. *See* 42 U.S.C. 14071(b)(2).

5. The Act requires that the state registration agency notify local law enforcement agencies concerning the release or subsequent movement of registered offenders to their areas. 42 U.S.C. 14071(b) (2) & (4). The revised guidelines make it clear that states have discretion concerning the form this notice will take. Permissible options include, for example, written notice, electronic transmission of registration information, and provision of on-line access to registration information.

6. The act requires periodic address verification for registered offenders, through the return of nonforwardable address verification forms that are sent to the registered address. 42 U.S.C. 14071(b)(3). Some state registration programs do not have the state registration agency directly send or receive address verification forms but delegate that function to local law enforcement agencies. The revised guidelines clarify that this approach to periodic address verification is permitted under the Act, as long as state procedures ensure that the state registration agency will be promptly made aware if the verification process discloses that the registrant is no longer at the registered address. The revised guidelines also clarify that states, if they wish, may require personal appearance of the registrant at a law enforcement agency to return an address verification form, as opposed to return of the form through the mail.

7. The Act contemplates the creation of a gap-free network of state registration programs, under which offenders who are registered in one state cannot escape registration requirements merely by moving to another state. *See, e.g.,* 42 U.S.C. 14071(b) (4) & (5). The revised guidelines effectuate this legislative objective by more clearly defining the obligation of states to register out-of-state offenders who move into the state.

8. The Act requires that released convicted offenders in the relevant offense categories by subject to registration and periodic address

verification for at least 10 years. 42 U.S.C. 14071(b)(6). This requirement is unqualified, and the revised guidelines make it clear that a state is not in compliance if it allows registration obligations to be waived or terminated before the end of this period on such grounds as a finding of rehabilitation or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act.

9. Where a person required to register is re-incarcerated for another offense or civilly committed, some states toll registration requirements during the subsequent incarceration or commitment. The revised guidelines clarify that this approach is consistent with the Act because tolling the registration period during confinement results in longer aggregate registration while the registrant is released. In addition, it is unnecessary to carry out address registration and verification procedures during confinement and doing so does not further the Act's objective of protecting the public from released offenders.

10. The Act prescribes more stringent registration requirements for a subclass of offenders characterized as ''sexually violent predators.'' *See* 42 U.S.C. 14071(a) (1) & (3) (C)–(E). Some states require that sexually violent predators be civilly committed, as opposed to being subject to more stringent registration requirements. The revised guidelines clarify that this approach may be allowed because it would be superfluous to carry out address registration and verification procedures while such an offender is committed.

11. The Act requires that the determination whether a person is (or is no longer) a ''sexually violent predator'' be made by the sentencing court. 42 U.S.C. § 14071(a)(2). In light of the variation among states in court structure and assignments of judicial responsibility, the revised guidelines clarify that this requirement means only the determination must be made by a court whose decision is legally competent to trigger the more stringent registration requirements prescribed for sexually violent predators by the Act. It does not mean that ''the sentencing court'' for purposes of the sexually violent predator determination must be the same court in which the offender was convicted for an underlying sexually violent offense.

12. The Act requires registration by persons convicted of a ''criminal offense against a victim who is a minor.'' 42 U.S.C. § 14071(a)(1). One of the clauses in the Act's definition of this term covers ''criminal sexual conduct toward a minor.'' § 14071(a)(3)(A)(iii). The revised guidelines state explicitly that this includes incest offenses against minors. The Act's definition of ''criminal offense against a victim who is a minor'' also includes two clauses relating to solicitation offenses: ''solicitation of a minor to engage in sexual conduct,'' and ''solicitation of a minor to practice prostitution.'' §§ 14071(a)(3)(A) (iv) & (vi). The revised guidelines provide greater detail in explaining the solicitation offenses that state registration systems must cover to comply with these provisions.

13. The Act also requires registration by persons convicted of a ''sexually violent offense.'' 42 U.S.C. § 14071(a)(1). It essentially provides that the term ''sexually violent offense'' means aggravated sexual abuse and sexual abuse as described in federal law or the state criminal code. § 14071(a)(3)(B). The revised guidelines clarify that states may comply with this requirement either by covering offenses that meet the federal law definition, or by covering comparable offenses under state law. The availability of the latter option is not limited to states that use the terms ''aggravated sexual abuse'' and ''sexual abuse'' or other specific terminology in referring to sex offenses in their criminal codes.

14. The revised guidelines clarify that the Act's time limits for reporting initial registration information and change of address information refer to the time within which the information must be submitted or sent, as opposed to the time within which it must be received by the state registration agency.

15. The Act requires criminal penalties for persons in the relevant offense categories who knowingly fail to register or keep registration information current. 42 U.S.C. § 14071(c). The revised guidelines clarify that this neither requires states to allow a defense for offenders who were unaware of the legal obligation to register nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time or release and obtaining a signed acknowledgment that this information has been provided.

16. The revised guidelines clarify that the Act does not preclude states from taking measures for the security of registrants who have been relocated and provided new identities under federal or state witness protection programs because the Act does not require that the registration system records include the registrant's original name or the registrant's residence prior to the relocation.

17. The revised guidelines encourage states to require registration for all convicted offenders in the pertinent offense categories, including offenders convicted in federal, military, and Indian tribal courts, as well as offenders convicted in state courts.

18. The revised guidelines encourage states to ensure that their sex offender registration agencies are ''criminal justice agencies'' as defined in 28 C.F.R. 20.3(c), to permit the free exchange of registration information between state registries and the FBI's records systems.

Subsequent to the enactment of Megan's Law, Congress enacted additional legislation relating to sex offender tracking and registration in the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104–236, 110 Stat. 3093 (hereafter referred to as the ''Pam Lychner Act'') The Pam Lychner Act includes, *inter alia,* amendments to the Jacob Wetterling Act affecting the duration of registration requirements, sexually violent predator certification, fingerprinting of registered offenders, address verification, and reporting of registration information to the FBI. The changes made by the Pam Lychner Act will be the subject of future guidelines. States have until three years for the Pam Lychner Act's enactment date of October 4, 1996 to come into compliance with the features of the Wetterling Act added by the Pam Lychner Act, subject to a possible two-year extension. These new provisions are not addressed in this publication.

Proposed Guidelines

These guidelines carry out a statutory directive to the Attorney General, in section 170101(a)(1) (42 U.S.C. § 14071(a)(1)), to establish guidelines for registration systems under the Act. Before turning to the specific provisions of the Act, four general points should be noted concerning the Act's interpretation and application.

First, states that wish to achieve compliance with the Jacob Wetterling Act should understand that its requirements constitute a floor for state registration systems, not a ceiling, and that they do not risk the loss of part of their Byrne Formula Grant funding by going beyond its standards. For example, a state may have a registration system that covers a broader class of sex offenders than those identified in the Jacob Wetterling Act, requires address

verification for such offenders at more frequent intervals than the Act prescribes, or requires offenders to register for a longer period of time than the period specified in the Act.

Exercising these options creates no problem of compliance because the provisions in the Jacob Wetterling Act concerning duration of registration, covered offenders, and other matters, do not preclude states from imposing additional or more stringent requirements that encompass the Act's baseline requirements. The general objective of the Act is to protect people from child molesters and violent sex offenders through registration requirements. It is not intended to, and does not have the effect of, making states *less* free than they were under prior law to impose registration requirements for this purpose.

Second, states that wish to achieve compliance with the Jacob Wetterling Act also should understand that they may, within certain constraints, use their own criminal law definitions in defining registration requirements and will not have to revise their registration systems to use technical definitions of covered sex offenses based on federal law. This point will be explained more fully below.

Third, the Jacob Wetterling Act contemplates the establishment of programs that will impose registration requirements on offenders who are subsequently convicted of offenses in the pertinent categories. The Act does not require states to attempt to identify and impose registration requirements on offenders who were convicted of offenses in these categories prior to the establishment of a conforming registration system. Nevertheless, the Act does not preclude states from imposing any new registration requirements on offenders convicted prior to the establishment of the registration system.

Fourth, the Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violet offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act.

Some state registration and notification systems have been challenged on constitutional grounds. The majority of courts that have dealt with the issue have held that systems like those contemplated by the Jacob Wetterling Act do not violate released offenders' constitutional rights. A few courts, however, have found that certain provisions of the state systems violate (or likely violate) the Constitution. *See Rowe* v. *Burton*, 884 F. Supp. 1372 (D, Alaska 1994) (on motion for preliminary relief) (notification provision), *appeal dismissed*, 85 F.3d 635 (9th Cir. 1996); *State* v. *Babin*, 637 So.2d 814 (La. App.) (retroactive application of notification provision), *writ denied*, 644 So.2d 649 (La. 1994); *State* v. *Payne*, 633 So.2d 701 (La. App. 1993) (same), *writ denied*, 637 So.2d 497 (La. 1994); *cf. In re Reed*, 663 p.2d 216 (Cal. 1983) (en banc) (registration requirements for misdemeanor offenders violate the California Constitution).

There has been extensive litigation concerning whether aspects of New Jersey's community notification program violate due process or ex post facto guarantees as applied to individuals who committed the covered offense prior to enactment of the notification statute. The Department of Justice believes that the New Jersey community notification statute at issue in those cases does not violate the Ex Post Facto Clause and that the Fourteenth Amendment's Due Process Clause of its own force does not require recognition of such a liberty interest on the part of offenders affected by that statute, and has filed ''friend of the court'' briefs supporting the New Jersey law.

The New Jersey Supreme Court, in *John Doe* v. *Poritz*, 142 N.J. 1, 662 A.2d 367 (1995), upheld the New Jersey statute, although it imposed certain procedural protections under federal and state law. In *Artway* v. *Attorney General of New Jersey*, 876 F. Supp. 666 (D.N.J. 1995), the District Court held that retroactive application of the notification provisions of New Jersey's Megan's Law violated the Ex Post Facto Clause. On appeal, however, this part of the District Court's decision was vacated on ripeness grounds. 81 F.3d 1235, *rehearing denied*, 83 F.3d 594 (3d Cir. 1996). Then, the District Court ruled in a class-action case that the notification provisions of New Jersey's Megan's Law, as modified by the New Jersey Supreme Court's decision in *Doe*, are constitutional, even when retroactively applied. *W.P.* v. *Poritz*, 931 F. Supp. 1199 (D.N.J. 1996), *appeal pending.*

There is ongoing litigation over the validity of notification systems—and particularly the validity of their retroactive application—in other states as well. *See, e.g., Doe* v. *Pataki*, 940 F. Supp. 603 (S.D.N.Y. 1996) (enjoining retroactive application of community notification as an ex post facto punishment), *appeal pending; Doe* v. *Weld*, 1996 WL 769398 (D. Mass. Dec. 17, 1996) (declining to enjoin retroactive application of community notification provisions); *Stearns* v. *Gregoire*, Dkt. No. C95–1486D, slip op. (W.D. Wash. Apr. 12, 1996) (same), *appeal pending; Opinion of the Justices*, 423 Mass. 1201, 668 N.E.2d 738 (1996) (advisory opinion that community notification provisions are constitutional, even as retroactively applied); *Kansas* v. *Myers*, 260 Kan. 669, 923 P.2d 1024 (1996) (holding that retroactive application of community notification violates the Ex Post Facto Clause), *petition for cert. pending.* The United States has filed briefs in several of these cases supporting the state laws. The United States Supreme Court soon will decide whether to grant a petition seeking review of the Kansas Supreme Court's holding that the retroactive application of Kansas' sex offender community notification provisions violates the Ex Post Facto Clause.

The remainder of these guidelines addresses the provisions of the Jacob Wetterling Act—including the Megan's Law amendment, but not including the changes made by the Pam Lychner Act—in the order in which they appear in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

General Provisions—Subsection (a)(1)–(2)

Paragraph (1) of subsection (a) of section 170101 directs the Attorney General to establish guidelines for state programs that require:

(A) current address registration for persons convicted of ''a criminal offense against a victim who is a minor'' or ''a sexually violent offense,'' and

(B) current address registration under a different set of requirements for persons who are determined to be ''sexually violent predators.''

For purposes of the Act, ''state'' should be understood to encompass the political units identified in the provision defining ''state'' for purposes of eligibility for Byrne Formula Grant funding (42 U.S.C. § 3791(a)(2)) in light of the tie-in between compliance with the Act and the allocation of Byrne Formula Grant funding. Hence, the ''states'' that must comply with the Act to maintain full eligibility for such funding are the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

Paragraph (2) of subsection (a) states that the determination whether a person is a ''sexually violent predator'' (which brings the more stringent registration standards into play), and the

determination that a person is no longer a ''sexually violent predator'' (which terminates the registration requirement under those more stringent standards), shall be made by the sentencing court after receiving a report by a state board composed of experts in the field of the behavior and treatment of sexual offenders.

''State board'' in paragraph (2) should be understood to mean a body or group containing two or more experts that is authorized by state law or designated under the authority of state law. Beyond the requirement that a board must be composed of experts in the field of the behavior and treatment of sexual offenders, the Act affords states discretion concerning the selection and composition of such boards. For example, a state could establish a single permanent board for this purpose, could establish a system of state-designated boards, or could authorize the designation of different boards for different courts, time periods, geographic areas or cases. In addition, the Act permits states to set their own standards concerning who qualifies as an expert in the field of the behavior and treatment of sexual offenders for purposes of board participation, and to utilize qualifying experts from outside the state to serve on the boards.

''Sentencing court'' in paragraph (2) should be understood to mean a court whose determination is competent under state law to trigger or terminate the more stringent registration requirements the Act prescribes for sexually violent predators. It does not mean that ''the sentencing court'' for purposes of the sexually violent predator determination must be the same court in which the offender was convicted for an underlying offense that gave rise to a requirement to register.

As noted above, subsection (a)(1) requires states to register persons convicted of certain crimes against minors and sexually violent offenses, but states are free to go beyond the Act's minimum standards and include other classes of offenders within their sex offender registration programs. For example, states are encouraged to require sex offenders convicted in federal, military, or Indian tribal courts who reside in their jurisdictions to register. Although the Act does not require states to register such offenders, the presence of any convicted sex offender in the state—whether the offender was prosecuted in a state, federal, military, or Indian tribal court—raises similar public safety concerns. Some states (*e.g.*, Washington and California) already require sex offenders convicted in federal or military courts to register.

The Act's requirement is one of current address registration, and the Act does not dictate under what name a person must be required to register. Hence, the Act does not preclude states from taking measures for the security of registrants who have been provided new identities and relocated under the federal witness security program (see 18 U.S.C. § 3521 *et seq.*) or comparable state programs. A state may provide that the registration system records will identify such a registrant only by his or her new name and that the registration system records will not include the pre-relocation address of the registrant or other information from which his or her original identity or participation in a witness security program could be inferred. States are encouraged to make provision in their laws and procedures for the security of such registrants and to honor requests from the United States Marshals Service and other agencies responsible for witness protection to ensure that the identities of these registrants are not compromised. Due to the federal statutory preemption concerning what may or may not be disclosed about federally protected witnesses, 18 U.S.C. §§ 3521(b) (1)(G) & (3), a state's failure to promulgate protective provisions may adversely affect its eligibility to send witnesses to, or to receive witness data from, the federal witness security program.

Definition of ''Criminal Offense Against a Victim Who is a Minor''—Subsection (a)(3)(A)

The Act prescribes a 10-year registration requirement for persons convicted of a ''criminal offense against a victim who is a minor''. Subparagraph (A) of paragraph (3) of subsection (a) defines the term ''criminal offense against a victim who is a minor.'' ''Minor'' should be understood to mean a person below the age of 18.

States do not have to track the terminology used in the Act's definition of ''criminal offense against a victim who is a minor'' in defining registration requirements. Rather, compliance depends on whether the substantive coverage of a state's registration requirements includes the offenses described in subparagraph (A) of paragraph (3).

The specific clauses in the Act's definition of ''criminal offense against a victim who is a minor'' are as follows:

(1) Clause (i) and (ii) cover kidnapping of a minor (except by a parent) and false imprisonment of a minor (except by a parent). All states have statutes that define offenses—going by such names as ''kidnapping,'' ''criminal restraint,'' or ''false imprisonment''—whose gravamen is abduction or unlawful restraint of a person. States can comply with these clauses by requiring registration for persons convicted of these statutory offenses whose victims were below the age of 18. The Act does not require inclusion of these offenses in the registration requirement when the offender is a parent, but states may choose to require registration for parents who commit these offenses.

(2) Clause (iii) covers offenses consisting of ''criminal sexual conduct toward a minor.'' States can comply with this clause by requiring registration for persons convicted of all statutory sex offenses under state law whose elements involved physical contact with a victim—such as provisions defining crimes of ''rape,'' ''sexual assault,'' ''sexual abuse,'' or ''incest''—in cases where the victim was in fact a minor at the time of the offense.

Coverage is not limited to cases where the victim's age is an element of the offense (such as prosecutions for specially defined child molestation offenses). Offenses that do not involve physical contact, such as exhibitionism, are not subject to the Act's mandatory registration requirements pursuant to clause (iii), but states are free to require registration for persons convicted of such offenses as well if they so choose.

(3) Clause (iv) covers offenses consisting of solicitation of a minor to engage in sexual conduct. The notion of ''sexual conduct'' should be understood in the same sense as in clause (iii). Hence, states can comply with clause (iv) by consistently requiring registration, in cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense would be covered by clause (iii), and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to engage in sexual activity involving physical contact.

(4) Clause (v) covers offenses consisting of using a minor in a sexual performance. This includes both live performances and using minors in the production of pornography.

(5) Clause (vi) covers offenses consisting of solicitation of a minor to practice prostitution. The interpretation of this clause is parallel to that of clause (iv). States can comply with clause (vi) by consistently requiring registration, in

cases where the victim was below the age of 18, based on:

—A conviction for an offense involving solicitation of the victim under a general attempt or solicitation provision, where the object offense is a prostitution offense, and

—A conviction for an offense involving solicitation of the victim under any provision defining a particular crime whose elements include soliciting or attempting to get a person to engage in prostitution.

(6) Clause (vii) covers offenses consisting of any conduct that by its nature is a sexual offense against a minor. This clause is intended to insure uniform coverage of convictions under statutes defining sex offenses in which the status of the victim as a minor is an element of an offense, such as specially defined child molestation offenses, and other offenses prohibiting sexual activity with underage persons. States can comply with this clause by including convictions under these statutes uniformly in the registration requirement.

(7) Considered in isolation, clause (viii) gives states discretion whether to require registration for attempts to commit offenses described in clauses (i) through (vii). However, any verbal command or attempted persuasion of the victim to engage in sexual conduct would bring the offense within the scope of the solicitation clause (clause (iv)), and make it subject to the Act's mandatory registration requirements. Moreover, this provision must be considered in conjunction with the Act's requirement of registration for persons convicted of a ''sexually violent offense,'' which does not allow the exclusion of attempts if they are otherwise encompassed within the definition of a ''sexually violent offense.''

Hence, state discretion to exclude attempted sexual offenses against minors from registration requirements pursuant to clause (viii) is limited by other provisions of the Act. The simplest approach for states would be to include attempted sexual assaults on minors (as well as completed offenses) uniformly as predicates for the registration requirement.

At the conclusion of the definition of ''criminal offense against a victim who is a minor,'' the Act states that (for purposes of the definition) conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger. However, here again, states are free to go beyond the Act's baseline requirements. The exemption of certain offenders based on age from the Act's mandatory registration requirements does not bar states from including such offenders in their registration systems if they wish. Moreover, the scope of subsection (a)(3)(A)'s exemption is also limited by other provisions of the Act that require registration of persons convicted of ''sexually violent offenses'' (as defined in (a)(3)(B)), with no provision excluding younger offenders where the criminality of the conduct depends on the victim's age.

Since the Act's registration requirements depend in all circumstances on conviction of certain types of offenses, states are not required to mandate registration for juveniles who are adjudicated delinquent—as opposed to adults convicted of crimes and juveniles convicted as adults—even if the conduct on which the juvenile delinquency adjudication is based would constitute an offense giving rise to a registration requirement if engaged in by an adult. However, states may require registration for juvenile delinquents, and the conviction of a juvenile who is prosecuted as an adult does count as a conviction for purposes of the Act's registration requirements.

Defintion of ''Sexually Violent Offense''—Subsection (a)(3)(B)

The Act prescribes a 10-year registration requirement for offenders convicted of a ''sexually violent offense,'' as well as for those convicted of a ''criminal offense against a victim who is a minor.''

Subparagraph (B) of paragraph (3) defines the term ''sexually violent offense'' to mean any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2241 of title 18, United States Code, or as described in the state criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit such an offense. In light of this definition, there are two ways in which a state could satisfy the requirement of registration for persons convicted of ''sexually violent offenses'':

First, a state could comply by requiring registration for offenders convicted for criminal conduct that would violate 18 U.S.C. § 2241 or § 2242—the federal ''aggravated sexual abuse'' and ''sexual abuse'' offenses—if prosecuted federally. Specifically, sections 2241 and 2242 generally proscribe non-consensual ''sexual acts'' with anyone, ''sexual acts'' with persons below the age of 12, and attempts to engage in such conduct. ''Sexual act'' is generally defined (in 18 U.S.C. § 2246(2)) to mean an act involving any degree of genital or anal penetration, oral-genital or oral-anal contact, or direct genital touching of a victim below the age of 16 in certain circumstances. (The second part of the definition in subparagraph (B) of paragraph (3), relating to physical contact with intent to commit aggravated sexual abuse or sexual abuse, does not enlarge the class of covered offenses under the federal law definitions because sections 2241 and 2242 explicitly encompass attempts as well as completed offenses.)

Second, a state could comply by requiring registration for offenders convicted of the state offenses that correspond to the federal offenses described above—i.e., the most serious sexually assaultive crime or crimes under state law, covering non-consensual sexual acts involving penetration—together with state offenses (if any) that have as their elements engaging in physical contact with another person with intent to commit such a crime.

Definition of ''Sexually Violent Predator''—Subsection (a)(3) (C)-(E)

Offenders who meet the definition of ''sexually violent predator'' are subject to more stringent registration requirements than other sex offenders.

(1) Subparagraph (C) defines ''sexually violent predator'' to mean a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(2) Subparagraph (D) essentially defines ''mental abnormality'' to mean a condition involving a disposition to commit criminal sexual acts of such a degree that it makes the person a menace to others. There is no definition of ''personality disorder'' in the Act; hence, the definition of this term is a matter of state discretion. For example, a state may choose to utilize the definition of ''personality disorder'' that appears in the Diagnostic and Statistical Manual of Mental Disorders: DSM–IV. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

(3) Subparagraph (E) defines ''predatory'' to mean an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

As noted earlier, the Act provides that the determination whether an offender is a ''sexually violent predator'' is to be made by the sentencing court with the assistance of a board of experts. The Act does not require, or preclude, that all persons convicted of a sexually violent

offense undergo a determination as to whether they satisfy the definition of ''sexually violent predator.'' It also does not specify under what conditions such an inquiry must be undertaken. A state that wishes to comply with the Act must adopt some approach to this issue, but the specifics are a matter of state discretion. For example, a state might provide that the decision whether to seek classification of an offender as a ''sexually violent predator'' is a matter of judgment for prosecutors or might provide that a determination of this question should be undertaken routinely when a person is convicted of a sexually violent offense and has a prior history of committing such crimes.

Similarly, the Act affords states discretion with regard to the timing of the determination whether an offender is a ''sexually violent predator.'' A state may, but need not, provide that a determination on this issue be made at the time of sentencing or as a part of the original sentence. It could, for example, be made instead by the responsible court when the offender has served a term of imprisonment and is about to be released from custody.

As with other features of the Jacob-Wetterling Act, sexually violent predator provisions only define baseline requirements for states that wish to maintain eligibility for full Bryne Formula Grant funding. States are free to impose these more stringent registration requirements on a broader class of offenders and may use state law categories or definitions for that purpose, without contravening the Jacob Wetterling Act. Likewise, while the Act does not require civil commitment of sexually violent predators or other offenders under any circumstances, states may, if they so wish, require civil commitment of persons determined to be sexually violent predators under the Act's standards and procedures in lieu of the Act's heightened registration requirements for such persons.

If a state chooses to subject all persons convicted of a ''sexually violent offense'' to the more stringent registration requirements and standards provided by the Act for ''sexually violent predators,'' then a particularized determination that an offender is a ''sexually violent predator'' would have no practical effect and would be superfluous. Hence, if a state elected this approach, it would not be necessary for the state to have ''sexually violent predator'' determinations made by the sentencing court or to constitute boards of experts to advise the courts concerning such determinations, prior to the commencement of registration. In a state that eschewed particularized ''front end'' determinations of ''sexually violent predator'' status in this manner, however, it would still be necessary to condition termination of the registration requirement on a determination by the sentencing court (assisted by a board of experts) pursuant to section 170101(b)(6)(B) of the Act that the person does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

Specifications Concerning State Registration Systems under the Act—Subsection (b)

Paragraphs (1) and (2) of subsection (b) set out duties for prison officers and courts in relation to offenders required to register who are released from prison or who are placed on any form of post-conviction supervised release (''parole, supervised release, or probation''). The duties generally include taking registration information, informing the offender of registration obligations, and transmitting the registration information to the designated state law enforcement agency.

The terms ''prison officer'' and ''court'' should be understood to include any officer having functions relating to correctional matters, offender supervision, or the execution of sentences. Hence, states have the option of assigning responsibility for the initial taking and transmission of registration information to probation or parole officers, as well as to persons who are prison or court officers in a narrower sense.

The specific duties set out in subparagraph (A) of paragraph (1) include: (i) informing the person of the duty to register and obtaining the information required for registration (i.e., address information), (ii) informing the person that he must give written notice of a new address within 10 days to a designated state law enforcement agency if he changes residence, (iii) informing the person that, if he changes residence to another state, he must inform the registration agency in the state he is leaving and must also register the new address with a designated state law enforcement agency in the new state within 10 days (if the new state has a registration requirement), (iv) obtaining fingerprints and a photograph if they have not already been obtained, and (v) requiring the person to read and sign a form stating that these requirements have been explained.

Beyond these basic requirements, which apply to all registrants, subparagraph (B) of paragraph (1) of subsection (b) requires that additional information be obtained in relation to a person who is required to register as a ''sexually violent predator.'' The information that is specifically required under subparagraph (B) is the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person. The Act does not require that prison officers or courts conduct an investigation to determine the offender's treatment history. For purposes of documenting the treatment received, prison officials and courts may rely on information that is readily available to them, either from existing records or the offender. In addition, prison officers and courts may comply with the requirement to document an offender's treatment history simply by noting that the offender received treatment for a mental abnormality or personality disorder. If states want to require the inclusion of more detailed information about the offender's treatment history, however, they are free to do so.

States that wish to comply with the Act will need to adopt statutes or administrative provisions to establish the duties specified in subsection (b)(1) and ensure that they are carried out. These informational requirements, like other requirements in the Act, only define minimum standards, and states may require more extensive information from offenders. For example, the Act does not require that information be obtained relating to registering offenders' employment, but states may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care for children.

As a second example, although it is not required under the Act, states are strongly encouraged to collect DNA samples, where permitted under applicable legal standards, to be typed and stored in state DNA databases. States also are urged to participate in the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS). CODIS is the FBI's program of technical assistance to state and local crime laboratories that allows them to store and match DNA records from convicted offenders and crime scene evidence. The FBI provides CODIS software, in addition to user support and training, free of charge, to state and local crime laboratories for performing forensic DNA analysis. CODIS permits DNA examiners in crime laboratories to exchange forensic DNA data on an intrastate level and will enable states to exchange DNA records among themselves through the national CODIS system. Thus, collection of DNA

samples and participation in CODIS greatly enhance a state's capacity to investigate and solve crimes involving biological evidence, especially serial and stranger rapes.

Paragraph (2) of subsection (b) states, in part, that the officer or court shall forward the registration information obtained from an offender who is being released to a designated state law enforcement agency within three days. In some states, the responsible official does not wait until the time of release to obtain registration information but obtains this information some period of time (e.g., 30 days or 60 days) prior to release. Under such a procedure, it is adequate if the registration information is forwarded no later than three days after release.

The Act leaves states discretion in designating an agency as the responsible ''state law enforcement agency,'' including the means by which such a designation is made, the timing of such a designation, and the agencies that may be designated. States are not required to select the state policy as the designated agency and may choose any agency with functions relating to the enforcement of law or protection of public safety. For example, states may designate as the pertinent ''state law enforcement agency'' a correctional agency, a crime statistics bureau or criminal records agency, or a department of public safety.

States are encouraged, however, to ensure that the designated state law enforcement agency is a ''criminal justice agency'' as defined in 28 C.F.R. 20.3(c). This will permit the free exchange of registration information between the state registry and the FBI's records systems.

Paragraph (2) of subsection (b) also provides that after receiving the registration information from the responsible officer or court, the designated state law enforcement agency must immediately enter the information into the appropriate state law enforcement record system and notify a law enforcement agency having jurisdiction where the person expects to reside. The Act leaves states discretion concerning the form of notification to the relevant local law enforcement agency. Permissible options include, for example, written notice, electronic transmission of registration information, and provision of on-line access to registration information. The Act also leaves states discretion in determining which state record system is appropriate for storing registration information. States that wish to achieve compliance with the Act, however, may need to modify state record systems if they are not currently set up to receive all the types of information that the Act requires from registrants.

In some states, the responsible prison officer or court sends the initial registration information both to the designated state law enforcement agency and to a local law enforcement agency having jurisdiction where the registrant will reside, as opposed to transmitting the information only to the state agency. This approach is allowed, and in such states the state agency need not be required to provide notice to the local law enforcement agency because such notice would be superfluous in relation to a local law enforcement agency that has received the registration information directly from the prison officer or court.

Likewise, the Act does not preclude a state procedure under which the prison officer or court transmits the initial registration information indirectly to the designated state law enforcement agency by sending it in the first instance only to a local law enforcement agency having jurisdiction where the registrant will reside, which is then required to forward the information to the state agency. Procedures of this type will be deemed in compliance, so long as the information is submitted or sent to the local law enforcement agency within the applicable time frame (no later than three days after release), and state procedures ensure that the local agency will forward the information promptly to the state agency. In a state with this type of procedure, having the state agency notify a local law enforcement agency from which it received the initial registration information would be superfluous and is not required.

Paragraph (2) of subsection (b) further provides that the state law enforcement agency shall immediately transmit the conviction data and fingerprints to the FBI. The Act should not be understood as requiring duplicative transmission of conviction data and fingerprints to the FBI at the time of initial registration if the state already has sent this information to the FBI (e.g., at the time of conviction).

Paragraph (3) of subsection (b) relates to verification of the offender's address. In essence, annual verification of address with the designated state law enforcement agency is required for all offenders through the return within 10 days of an address verification form sent by the agency to the registrant. However, the verification intervals are 90 days (rather than a year) for ''sexually violent predators.''

As noted earlier, these are baseline requirements which do not bar states from requiring verification of address at shorter intervals than those specified in the Act. Likewise, states may, if they wish, strengthen the requirements for transmission and return of verification forms beyond the minimum required by the Act, such as requiring registrants to appear in person at a law enforcement agency to return verification forms that have been sent to their residences.

In some states, the designated state law enforcement agency does not directly carry out address verification but develops verification forms which are sent out and received by local law enforcement agencies. This delegation of responsibility for the verification function is allowed, so long as the procedure specified in the Act for periodic address verification through transmission and return of a verification form is complied with, and state procedures ensure that the designated state law enforcement agency will promptly be made aware if the verification process discloses that the registrant is no longer at the registered address.

As indicated above, under paragraph (1)(A) of subsection (b) of the Act, registrants are required to submit or send change of address information within 10 days of the change of residence. Paragraph (4) of subsection (b) requires the designated state law enforcement agency to notify other interested law enforcement agencies of a change of address by the registrant. Specifically, when a registrant changes residence to a new address, the designated law enforcement agency must (i) notify a law enforcement agency having jurisdiction where the registrant will reside, and (ii) if the registrant moves to a new state, notify the law enforcement agency with which the offender must register in the new state (if the new state has a registration requirement).

Under many state registration programs, registrants do not send change of address information directly to the designated state law enforcement agency but provide this information to a local law enforcement agency or other intermediary (such as a probation officer), which is then required to forward it to the state agency. This approach is allowed under the Act, so long as the registrant is required to submit or send change of address information to the intermediary within the time frame specified by the Act (no later than 10 days after the change of address), and state procedures ensure that the intermediary will forward the information promptly to the designated state law enforcement agency. If the intermediary that receives the change of address information in the first instance is a local law enforcement agency

having jurisdiction where the registrant will reside, then the designated state law enforcement agency does not have to notify that local law enforcement agency of the change of address because doing so would be superfluous. If, however, the intermediary is a local law enforcement agency in the place from which the registrant is moving, the requirement remains of immediately notifying a law enforcement agency having jurisdiction over the new place of residence. Either the state agency or the local law enforcement agency that receives the change of address information in the first instance must provide such notification.

Paragraph (5) requires a person convicted of an offense that requires registration under the Act who moves to another state to register within 10 days with a designated state law enforcement agency in his new state of residence (if the new state has a registration requirement). This entails responsibilities for states in relation to out-of-state offenders who move into the state, as well as personal responsibilities for the registrant. To comply with the Act, a state registration program must require registration by out-of-state offenders in the Act's offense categories who move into the state and must provide that such offenders are required to register within 10 days of establishing residence in the state.

Subparagraph (A) of paragraph (6) states that the registration requirement remains in effect for 10 years. As noted earlier, states may choose to establish longer registration periods, but registration requirements of shorter duration are not consistent with the Act. Hence, for example, a state program is not in compliance with the Act if it allows registration obligations to be waived or terminated before the end of the 10 year period on such grounds as a finding of rehabilitation, or a finding that registration (or continued registration) would not serve the purposes of the state's registration provisions. However, if the underlying conviction is reversed, vacated, or set aside, or if the registrant is pardoned, registration (or continued registration) is not required under the Act. Also, a state may toll registration requirements during periods in which an offender is incarcerated for another offense or civilly committed because it is superfluous to carry out address registration and verification procedures while the registrant is confined.

Subparagraph (B) of paragraph (6) states that the registration requirement for ''sexually violent predators'' under the Act terminates upon a determination that the offender no longer suffers from a mental abnormality or personality disorder that would make him likely to engage in a predatory sexually violent offense. This provision does not require review of the offender's status at any particular interval. For example, a state could set a minimum period of 10 years before entertaining a request to review the status of a ''sexually violent predator,'' the same period as the general minimum registration period for sex offenders under the Act.

The termination provision in subparagraph (B) of paragraph (6) only affects the requirement that a person register as a ''sexually violent predator'' under subparagraph (B) of subsection (a)(1) of the Jacob Wetterling Act. It does not limit states in imposing more extensive registration requirements under their own laws. Moreover, even if it has been determined as provided in subparagraph (B) of paragraph (6) that a person is no longer a ''sexually violent predator,'' this does not relieve the person of the 10-year registration requirement under other provisions of the Jacob Wetterling Act which applies to any person convicted of a ''criminal offense against a victim who is a minor'' or a ''sexually violent offense.''

Criminal Penalties for Registration Violations—Subsection (c)

The Act provides that a person required to register under a state program established pursuant to the Act who knowingly fails to register and keep such registration current shall be subject to criminal penalties. Accordingly, states that wish to comply with the Act will need to enact criminal provisions covering this situation as part of, or in conjunction with, the legislation defining their registration systems, if they have not already done so.

The Act neither requires states to allow a defense for offenders who were unaware of their legal registration obligations nor precludes states from doing so. As a practical matter, states can ensure that offenders are aware of their obligations through consistent compliance with the Act's provisions for advising offenders of registration requirements at the time of release and obtaining a signed acknowledgment that this information has been provided. If the violation by a registrant consists of failing to return an address verification form within 10 days of receipt, the state may allow a defense if the registrant can prove that he did not in fact change his residence address, as provided in subsection (b)(3)(A)(iv).

Release of Registration Information—Subsection (d)

Subsection (d) governs the disclosure of information collected under a state registration program. This part of the Act has been amended by the federal Megan's Law (Pub. L. No. 104–145, 110 Stat. 1345). To comply with the Megan's Law amendment, a state must establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment of the program. States do not have to apply new information release standards to offenders whose convictions predate the establishment of a conforming program, but the Act does not preclude states from applying such standards retroactively to offenders convicted earlier if they so wish.

The Megan's Law amendment made two important changes from the prior law:

First, subsection (d) originally provided that information collected under state registration programs is to be treated as private data, subject to limited exceptions. The Megan's Law amendment has repealed the general ''private data'' restriction and has substituted an affirmative statement (in subsection (d)(1)) that information collected under a state registration program may be disclosed for any purpose permitted under the law of the state. Hence, under the current law, there is no requirement that registration information be treated as private or confidential to any greater extent than the state may wish.

Second, paragraph (2) of subsection (d), as amended, provides that the designated state law enforcement agency, and any local law enforcement agency authorized by the state agency, *shall* release relevant information that is necessary to protect the public concerning a specific person required to register under the Act. In contrast, the prior law only provided that information *may* be released for this purpose.

The principal objective of this change is to ensure that registration programs will include means for members of the public to obtain information concerning registered offenders that is necessary for the protection of themselves or their families. In light of this change, a state cannot comply with the Act by releasing registration information only to law enforcement agencies, to other governmental or non-governmental agencies or organizations, to prospective employers, or to the victims of registrants' offenses. States also cannot comply by having purely permissive or

discretionary authority for officials to release registration information. Information must be released to members of the public as necessary to protect the public from registered offenders. This mandatory disclosure requirement applies both in relation to offenders required to register because of conviction for ''a criminal offense against a victim who is a minor'' and those required to register because of conviction for a ''sexually violent offense.''

States do, however, retain discretion to make judgments concerning the circumstances in which, and the extent to which, the disclosure of registration information to the public is necessary for public safety purposes and to specify standards and procedures for making these determinations. Several different approaches to this issue appear in existing state laws.

One type of approach, which is consistent with the requirements of the Jacob Wetterling Act as amended, involves particularized risk assessments of registered offenders, with differing degrees of information release based on the degree of risk. For example, some states classify registered offenders in this manner into risk levels, with (1) Registration information limited to law enforcement uses for offenders in the ''low risk'' level, (2) notice to organizations with a particular safety interest (such as schools and other child care entities) for ''medium risk'' offenders, and (3) notice to neighbors for ''high risk'' offenders.

States are also free under the Act to make judgments concerning the degree of danger posed by different types of offenders and to provide information disclosure for all offenders (or only offenders) with certain characteristics or in certain offense categories. For example, states may decide to focus particularly on child molesters, in light of the vulnerability of the potential victim class, and on recidivists, in light of the threat posed by offenders who persistently commit sexual offenses.

Another approach consistent with the Act is to make information accessible to members of the public on request. This may be done, for example, by making registration lists open for inspection by the public, by establishing call-in numbers which members of the public can contact to obtain information on the registration status of identified individuals, or by providing such information in response to written requests. As with proactive notification systems, states that have information-on-request systems may make judgments about which registered offenders or classes of registered offenders should be covered and what information will be disclosed concerning these offenders.

States are encouraged to involve victims and victim advocates in the development of their information release programs and in the process for particularized risk assessments of registrants if the state program involves such assessments.

Paragraph (2) of subsection (d) does not deprive states of the authority to exercise centralized control over the release of information, or if the state prefers, to have local agencies make determinations concerning public safety needs and information release.

A proviso at the end of paragraph (2) states that the identity of the victim of an offense that requires registration under the Act shall not be released. This proviso safeguards victim privacy by prohibiting disclosure of victim identity to the general public in the context of information release programs for registered offenders. It does not bar the dissemination of victim identity information for law enforcement or other governmental purposes (as opposed to disclosure to the public) and does not require that a state limit maintenance of or access to victim identity information in public records (such as police and court records) which exist independently of the registration system. Because the purpose of the proviso is to protect the privacy of victims, its restriction may be waived at the victim's option.

So long as the victim is not identified, the proviso in paragraph (2) does not bar including information concerning the characteristics of the victim and the nature and circumstances of the offense in information release programs for registered offenders. For example, states are not barred by the proviso from releasing such information as victim age and gender, a description of the offender's conduct, and the geographic area where the offense occurred.

Immunity for Good Faith Conduct—Subsection (e)

Subsection (e) states that law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under the Act.

Compliance—Subsection (f)

States have three years from the date of enactment (i.e., September 13, 1994) to come into compliance with the Act unless the Attorney General grants an additional two years where a state is making good faith efforts at implementation. States that fail to come into compliance within the specified time period will be subject to a mandatory 10% reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance.

States are requested to submit descriptions of their existing or proposed registration systems for sex offenders to the Bureau of Justice Assistance as soon as possible. These submissions will be reviewed to determine the status of state compliance with the Act and to suggest any necessary changes to achieve compliance before the funding reduction goes into effect.

To maintain eligibility for full Byrne Formula Grant funding following September 13, 1997—the end of the three-year implementation period provided by the Act—states must submit to the Bureau of Justice Assistance by July 13, 1997, information that shows compliance with the Act or a written explanation of why compliance cannot be achieved within that period and a description of the good faith efforts that justify an extension of time (but not more than two years) for achieving compliance. States will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the Act.

Dated: March 28, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–8702 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 96–24]

Jose R. Castro, M.D.; Denial of Application

On February 20, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jose R. Castro, M.D. (Respondent), of Alma, Georgia, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest. The Order to Show Cause alleged, in substance, that: (1) From August 1989 through February 1990, Federal and state agents made 12 undercover visits to Respondent's office and that on each occasion, Respondent issued the agents prescriptions for

controlled substances for no legitimate medical use and outside the scope of professional practice; (2) On or about January 10, 1991, Respondent was indicted in the United States District Court for the Southern District of Georgia and charged with 12 counts of illegal distribution of controlled substances; (3) On May 8, 1991, Respondent was found guilty in the United States District Court for the Southern District of Georgia of four counts of illegal distribution of controlled substances; (4) Between 1989 and 1991, Respondent prescribed numerous different controlled substances to an individual for no legitimate medical reason. On May 17, 1991, the individual died of a drug overdose after consuming a combination of controlled substances prescribed by Respondent. A subsequent autopsy revealed that the individual died of multiple drug poisoning, consistent with the controlled substances that Respondent prescribed; (5) On September 3, 1991, the Composite State Board of Medical Examiners, State of Georgia, ordered the summary suspension of Respondent's privileges to handle controlled substances. Pursuant to the Order, Respondent was ordered to surrender DEA Certificate of Registration AC 9230311. Accordingly, on September 10, 1991, Respondent voluntarily surrendered his DEA registration.

On March 22, 1996, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was scheduled to commence on January 29, 1997. On October 16, 1996, the Government filed a Motion for Summary Disposition, alleging that Respondent was not currently authorized to handle controlled substances in the State of Georgia. The Government's motion was supported by a copy of a Consent Order entered into by Respondent and the Composite State Board of Medical Examiners for the State of Georgia (Board) on January 9, 1992, and a copy of a letter from the Board to DEA dated October 11, 1996, stating that Respondent was not authorized to possess or prescribe controlled substances. Although provided an opportunity to do so, Respondent did not file a response to the Government's motion.

On November 22, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision finding that Respondent lacked authorization to handle controlled substances in the State of Georgia; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her opinion, and on January 8, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Laws and Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that on January 9, 1992, Respondent and the Board entered into a Consent Order whereby Respondent's license to practice medicine was suspended for five years with all but the first six months suspended and was then placed on probation. As part of the Consent Order, Respondent relinquished, until further order of the Board, ''his right to prescribe, administer, dispense, order or possess * * * controlled substances.'' A letter from the Board dated October 11, 1996, indicated that Respondent was ''not authorized to possess or prescribe any controlled substance.'' There is no evidence in the record that the Board has since reinstated Respondent's controlled substance privileges. Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Georgia.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). In the instant case, the record indicates that Respondent is not currently authorized to handle controlled substances in the State of Georgia. As Judge Bittner notes, ''[b]ecause Respondent lacks this state authority, he is not currently entitled to a DEA registration.'' Because Respondent is not entitled to a DEA registration, the Acting Deputy Administrator finds it unnecessary to address whether Respondent's registration would be inconsistent with the public interest as alleged in the Order to Show Cause.

Judge Bittner also properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in Georgia. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Phillip E. Kirk, M.D.*, 48 FR 32,887 (1983), aff'd d sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 44 F2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that the application submitted by Jose R. Castro, M.D. for a DEA Certificate of Registration, be, and it hereby is, denied. This order is effective May 5, 1997.

Dated: March 24, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–8560 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–09–M

Abbas Helim Demetrios, M.D.; Revocation of Registration

On June 24, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Abbas Helim Demetrios, M.D., notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BD1248029, and deny any pending requests for modification of such registration to change the registered address from California to Georgia, pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the States of California and Georgia. The order also notified Dr. Demetrios that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received on July 1, 1996. No request for a hearing

or any other reply was received by the DEA from Dr. Demetrios or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that: (1) Thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Demetrios is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that Dr. Demetrios is currently registered with DEA in the State of California. On June 3, 1993, he submitted a renewal application for his DEA registration indicating that he wanted to change the address to a location in Cumming, Georgia.

The Acting Deputy Administrator further finds that on December 6, 1993, the Composite State Board of Medical Examiners for the State of Georgia (Georgia Board) ordered the summary suspension of Dr. Demetrios' license to practice medicine in the State of Georgia ''based upon (his) repeated pattern of inappropriate sexual conduct with his patients.'' Subsequently, on October 5, 1994, the Georgia Board accepted the voluntary surrender of Dr. Demetrios' Georgia medical license. Thereafter, on May 30, 1995, the Medical Board of California (California Board) filed an Accusation proposing to revoke Dr. Demetrios' license to practice medicine in the State of California based upon the action of the Georgia Board, as well as Dr. Demetrios' conviction in a Georgia state court on charges of rape, battery, aggravated sexual battery, simple battery, sexual battery, and sexual assault by a practitioner of psychotherapy against a patient. On April 3, 1996, the California Board entered a Default Decision revoking Dr. Demetrios' California medical license effective May 3, 1996. The Acting Deputy Administrator concludes that Dr. Demetrios is not currently authorized to handle controlled substances in the State of California, where he is currently registered with DEA, nor in the State of Georgia, where he is requesting modification of his DEA registration.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D. 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). Here, it is clear that Dr. Demetrios is neither currently authorized to practice medicine nor to dispense controlled substances in the States of Georgia and California. Therefore, he is not entitled to a DEA registration in either state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BD1248029, previously issued to Abbas Helim Demetrios, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending requests for renewal and/or modification of such registration, be, and they hereby are, denied. This order is effective May 5, 1997.

Dated: March 24, 1997.

James S. Milford,

Acting Deputy Adminstrator.

[FR Doc. 97–8559 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–44]

Hagura Pharmacy; Denial of Application

On May 23, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Hagura Pharmacy (Respondent) of Philadelphia, Pennsylvania, notifying it of an opportunity to show cause as to why DEA should not deny its application for registration as a retail pharmacy under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated June 22, 1995, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania on March 19, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called a witness to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On December 6, 1996, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her Opinion and Recommended Ruling and on January 9, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The Acting Deputy Administrator's adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent pharmacy is located in Philadelphia, Pennsylvania and is owned and operated by Tahir Abdullah, R.Ph., M.D. (hereinafter referred to as Dr. Abdullah). Respondent pharmacy is seeking registration with DEA in order to handle controlled substances.

Dr. Abdullah received his pharmacy training in Pakistan and came to the United States in 1973. From approximately 1977 until 1985, Dr. Abdullah owned another pharmacy, also named Hagura Pharmacy, at another location in Philadelphia, Pennsylvania. In 1979, Dr. Abdullah's brother came to the United States and worked at Hagura Pharmacy as a clerk. Dr. Abdullah was the pharmacist-in-charge at Hagura Pharmacy until approximately 1981 when he began his medical education outside of the United States. Beginning in 1981, Dr. Abdullah's brother and the pharmacist-in-charge handled the daily operations of the pharmacy and Dr. Abdullah's wife paid the bills. In 1983, he returned to the United States after the university he was attending closed. While he was in Philadelphia for the most part from 1983 through 1985, Dr. Abdullah only occasionally went to Hagura Pharmacy and was not involved in the daily operations of the pharmacy.

In 1984, unbeknownst to Dr. Abdullah, his brother attempted to fraudulently assume ownership of Hagura Pharmacy. However in this proceeding, it is undisputed that Dr. Abdullah remained the owner of Hagura Pharmacy. In February 1985, Dr. Abdullah decided to sell Hagura Pharmacy to his brother-in-law and on February 28, 1995, papers were filed with the State Board of Pharmacy for a change of ownership and listing the new name of the pharmacy as Khawaja

Pharmacy. A new DEA Certificate of Registration was issued to Khawaja Pharmacy. However, after only one payment was made by Dr. Abdullah's brother-in-law, Khawaja Pharmacy was closed and the inventory was transferred to another local pharmacy in mid-April 1985. Dr. Abdullah testified at the hearing in this matter that he arranged for the sale of Khawaja Pharmacy. There is some question as to whether Dr. Abdullah's brother-in-law was ever the actual owner of Khawaja Pharmacy, however in light of the findings below, the Acting Deputy Administrator finds it unnecessary to resolve this issue.

In 1985, DEA initiated an investigation of the controlled substance handling practices of Hagura Pharmacy and Khawaja Pharmacy. This investigation was initiated after DEA had received a number of reports from Hagura Pharmacy's suppliers that the pharmacy was purchasing an excessive amount of Schedule II controlled substances. On May 23, 1985, DEA investigators attempted to serve an administrative inspection warrant at then-Khawaja Pharmacy. After discovering that the pharmacy was closed, the investigators contacted Dr. Abdullah at the suggestion of the State Board of Pharmacy. Dr. Abdullah and the pharmacist-in-charge of Hagura Pharmacy and Khawaja Pharmacy met with the investigators at a building where the controlled substance records of the pharmacies were maintained. Dr. Abdullah signed, as the owner of the pharmacy, a receipt for the records turned over to the investigators.

The investigators then conducted an accountability audit of Schedule II controlled substances using the records supplied by Dr. Abdullah, as well as information provided by Hagura Pharmacy's suppliers and the inventory conducted by the pharmacist-in-charge of Khawaja Pharmacy upon its closure. The audit covered the period January 3, 1984 through April 17, 1985, and revealed a shortage of 2,359 dosage units of Ritalin 20 mg. and overages of the other audited substances.

In conducting the audit, the investigators noted that at least 85% of the approximately 2,400 Schedule II prescriptions filled during the audit period were issued by one of three doctors, all of whose offices were located at least ten miles from Hagura Pharmacy. The investigators interviewed those doctors and showed them copies of the prescriptions. Each of the doctors stated that the names on the prescriptions were not patients of the doctor, that it was not the doctor's signature on the prescriptions, and that no one from either Hagura Pharmacy or Khawaja Pharmacy had ever telephoned the doctor attempting to verify the prescriptions. The investigators then telephonically contacted the other doctors whose prescriptions were found in the pharmacies' records to verify their legitimacy. The investigators determined that fraudulent prescriptions found in the records of the pharmacies accounted for 89% of the approximately 174,000 dosage units of the audited Schedule II substances dispensed during the audit period, and approximately 90% of the fraudulent prescriptions were filled when the pharmacy was operating under the name Hagura Pharmacy. For purposes of the audit, the investigators included the fraudulent prescriptions in the total amount of controlled substances dispensed during the audit period. However, if those prescriptions were excluded, the results of the audit would be significantly different, with the shortage being larger and the overages turning into shortages.

Dr. Abdullah graduated from medical school in 1987, however as of the date of the hearing he was not licensed to practice medicine in the United States. Dr. Abdullah testified that if Respondent pharmacy is issued a DEA Certificate of Registration, he will be the managing pharmacist, and if he becomes licensed to practice medicine in the United States, he will close Respondent pharmacy and surrender its DEA registration.

The Government contends that Respondent's registration would be inconsistent with the public interest based upon the fact that Hagura Pharmacy, while owned by Dr. Abdullah, did not keep accurate controlled substance dispensing records as evidenced by the results of the accountability audit and the significant number of fraudulent prescriptions that were filled by the pharmacy. The Government also contends that Respondent's registration would not be in the public interest because Dr. Abdullah blames others for the problems of Hagura Pharmacy, even though he was the owner.

Respondent contends that although he was the owner, he was not involved in the daily operations of Hagura Pharmacy from 1981 through 1985, and therefore, was not involved in any alleged wrongdoing. Respondent further argues that any alleged wrongdoing occurred prior to 1985 and therefore, DEA's proposed denial of its application for registration is barred by the doctrine of laches and/or principles of equity.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, there is no evidence in the record that any state licensing authority has taken any action against Dr. Abdullah or any of his pharmacies. As Judge Bittner noted ''that although state licensure is a prerequisite for a DEA registration, it is not the only factor to be considered.''

As to factor two, the Acting Deputy Administrator finds that while DEA registers pharmacies, a pharmacy can only act through its officers and agents. As Judge Bittner stated in her opinion, ''[i]t is well settled that the Deputy Administrator may revoke, suspend, or deny a registration to a pharmacy 'based on the controlled substance handling practices of the pharmacy's owner, majority shareholder, officer, managing pharmacist or other key employee.''' Cumberland Prescription Center, Inc., 52 FR 37,224 (1987). Therefore, in determining Respondent's experience in dispensing controlled substances, the Acting Deputy Administrator considers the experience of Respondent's owner/pharmacist, Dr. Abdullah.

It is undisputed that Dr. Abdullah was the owner of Hagura Pharmacy from 1977 until at least the end of February 1985. The DEA audit of Hagura Pharmacy/Khawaja Pharmacy, covering the period January 3, 1984 through April 17, 1985, revealed that more than 2,400 fraudulent prescriptions were filed by the pharmacy. Further investigation revealed that three doctors' names appeared as the

prescribing physicians on approximately 85% of these prescriptions and these doctors indicated that the prescriptions were forged and that no one from Hagura Pharmacy had ever contacted them to verify the legitimacy of the prescriptions. Of the forged prescriptions, 90% were filled prior to February 28, 1985, while the pharmacy was operating as Hagura Pharmacy with Dr. Abdullah as the owner. Dr. Abdullah contends that he should not be held accountable for the forged prescriptions that were filled at Hagura Pharmacy since he was not actively involved in the operation of the pharmacy at that time.

Like Judge Bittner, the Acting Deputy Administrator rejects Dr. Abdullah's contention. As the owner, he was ultimately responsible for what occurred at his pharmacy regardless of whether he was involved in its daily operation or not. It was Dr. Abdullah's responsibility to ensure that adequate safeguards were in place to prevent the diversion of controlled substances. However, with Dr. Abdullah as the owner, Hagura Pharmacy dispensed thousands of dosage units of highly abused Schedule II controlled substances pursuant to fraudulent prescriptions. The Acting Deputy Administrator is troubled by Dr. Abdullah's continued assertions that he should not be held accountable for the improper dispensing that occurred at Hagura Pharmacy. Dr. Abdullah's failure to accept responsibility, does not bode well for Respondent's future handling of controlled substances.

Regarding factors three and four, there is no evidence that Respondent or Dr. Abdullah had ever been convicted under state or Federal laws relating to controlled substances. However, there is evidence that Hagura Pharmacy, while owned by Dr. Abdullah, failed to comply with Federal laws relating to controlled substances. Hagura Pharmacy failed to maintain complete and accurate records of controlled substances in violation of 21 U.S.C. 827 and 21 CFR 1304.21, as evidenced by the accountability audit results. In addition, Hagura Pharmacy dispensed controlled substances without a valid prescription in violation of 21 U.S.C. 829 and 21 CFR 1306.04. Dr. Abdullah again argues that he should not be held accountable for Hagura Pharmacy's failure to comply with Federal laws since he was not an active participant in the operation of the pharmacy. However, for the reasons discussed in conjunction with factor two, the Acting Deputy Administrator rejects this argument.

As to factor five, Judge Bittner found relevant ''* * * Dr. Abdullah's lack of candor regarding the ownership of the pharmacy. * * *'' Dr. Abdullah maintained that he was not the owner of Khawaja Pharmacy and therefore should not be held accountable for the actions of that pharmacy. Judge Bittner found this argument ''at best disingenuous'' in light of the fact that Dr. Abdullah arranged for the transfer of the inventory to another pharmacy upon Khawaja Pharmacy's closure, an that his brother-in-law had only made one payment to Dr. Abdullah at the time the pharmacy closed. But like Judge Bittner, the Acting Deputy Administrator finds it unnecessary to assess the impact of this finding on the outcome of this proceeding, since 90% of the fraudulent prescriptions were filed by Hagura Pharmacy while, without dispute, it was owned by Dr. Abdullah.

Respondent asserts that the alleged wrongdoing occurred more than ten years ago and therefore the doctrine of laches or other principles of equity should preclude the denial of Respondent's application for registration. DEA has consistently held that while passage of time since the wrongdoing is not, by itself, dispositive, it is a consideration in assessing whether Respondent's registration would be inconsistent with the public interest. See Norman Alpert, M.D., 58 FR 67,420 (1993). In Alpert, the then-Acting Administrator found significant, ''Respondent's recognition of the serious abuse of his privileges as a DEA registrant, and his sincere regret for his actions.'' Here however, Dr. Abdullah maintains that he has done nothing wrong and that he should not be held accountable for the actions of Hagura Pharmacy, even though he was its owner.

Judge Bittner concluded that ''[i]t is clear from Dr. Abdullah's suggestion that he should not be held accountable for the wrongdoing of his pharmacy during his absence that he does not appreciate or accept the responsibilities that accompany owning a DEA registrant. In addition, there is no persuasive evidence in the record to indicate that Dr. Abdullah would be a more conscientious owner the second time around.'' The Acting Deputy Administrator agrees. Dr. Abdullah has exhibited a complete disregard for the tremendous responsibilities that accompany the issuance of a DEA registration. Therefore, the Acting Deputy Administrator concludes that it would be inconsistent with the public interest to grant Respondent pharmacy a DEA registration.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration as a retail pharmacy submitted by Hagura Pharmacy, be, and it hereby is, denied. This order is effective May 5, 1997.

Dated: March 27, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–8558 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–09–M

Romeo J. Perez, M.D.; Revocation of Registration

On July 31, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Romeo J. Perez, M.D., of St. Louis, Missouri, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AP1596014, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Missouri. The order also notified Dr. Perez that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received on August 2, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Perez or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that: (1) Thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Perez is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that, by order effective August 24, 1994, the State Board of Healing Arts, State of Missouri (Board) revoked Dr. Perez' license to practice medicine. The Board further ordered that Dr. Perez shall not apply for reinstatement of his license for at least two years and one day from the effective date. The Acting Deputy Administrator finds that there is

no evidence in the record that Dr. Perez has sought reinstatement of his medical license. By letter dated September 6, 1994, the Missouri Bureau of Narcotics and Dangerous Drugs informed Dr. Perez that his Missouri controlled substances registration terminated when his license to practice medicine was revoked, and therefore he is not authorized to handle controlled substances in Missouri. The Acting Deputy Administrator concludes, based upon the record before him, that Dr. Perez is not currently authorized to handle controlled substances in Missouri.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D. 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992). Here, it is clear that Dr. Perez is neither currently authorized to practice medicine nor to dispense controlled substances in the State of Missouri. Therefore, Dr. Perez is not currently entitled to a DEA registration.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AP1596014, previously issued to Romeo J. Perez, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective May 5, 1997.

Dated: March 24, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–8561 Filed 4–3–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

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.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume III:

North Carolina
NC970053 (April 04, 1997)

Volume VI:

Utah
UT970035 (April 04, 1997)
UT970036 (April 04, 1997)

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:

Connecticut
CT970001 (Feb. 14, 1997)
CT970003 (Feb. 14, 1997)
CT970004 (Feb. 14, 1997)
Massachusetts
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
MA970015 (Feb. 14, 1997)
MA970020 (Feb. 14, 1997)
Maine
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ME970007 (Feb. 14, 1997)
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DE970005 (Feb. 14, 1997)
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VA970055 (Feb. 14, 1997)
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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 Determinations 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 seven 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 28th day of March 1997.

Margaret Washington,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–8337 Filed 4–3–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Processes; 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: Advisory Panel for Biomolecular Processes—(5138)(Panel A).

Date and Time: Wednesday, Thursday, and Friday, April 23, 24, & 25, 1997, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Rona Hirschberg, Program Director and Dr. Susan Porter Ridley, Assistant Program Manager for Metabolic Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703) 306–1441.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8688 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological & Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).

Date & Time: May 14–16, 1997; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Contact Person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate social psychology proposals as part of the selection process for awards.

Type of Meeting: Part-open: May 15, 1997, 1:00 p.m.–2:00 p.m.; Closed session: May 14, 1997, 9:00 a.m.–5:00 p.m.; May 15, 1997, 9:00 a.m.–12:00 p.m. and 2:00 p.m.–5:00 p.m.; May 16, 1997, 9:00 a.m.–5:00 p.m.

Date & Time: April 23–25, 1997, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, Virginia 22230.

Contact Person: Dr. Fernanda Ferreira, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate linguistics proposals as part of the selection process for awards.

Type of Meeting: Part-open: April 25, 1997, 9:00 a.m.–12:00 p.m.; Closed session: April 23, 1997, 9:00 a.m.–5:00 p.m.; April 24, 1997, 9:00 a.m.–5:00 p.m.; April 25, 1997, 1:00 p.m.–5:00 p.m.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

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 April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8686 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; 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 Cross Disciplinary Activities (1193).

Date and time: April 22, 1997; 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Rooms 1120 and 1150.

Contact Person(s): John C. Cherniavsky and Caroline Wardle, Head and Program Director, CISE/OCDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Educational Innovation 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8680 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; 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 Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: April 24, 1997, 8:30 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Hazelrigg, Program Director, Design and Integration Engineering, Dr. Georgia-Ann Klutke, Program Director, Operations and Productions Systems, Dr. Ming Leu, Program Director, Manufacturing, Machines, and Equipment, Dr. Jay Lee, Program Director, Materials Processing and Manufacturing, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Grant Opportunities for Academic Liaison with Industry (GOALI) 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8685 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Developmental Mechanisms; 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: Advisory Panel for Developmental Mechanisms (1141).

Date and Time: April 23–25, 1997, 8:30 am to 5:00 pm.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-open.

Contact Person: Dr. Judith Plesset and Dr. Lynn Zimmerman, Program Directors, Developmental Mechanisms, Room 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 Telephone: (703) 306–1417.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 24, 1997; 2:00 p.m. to 2:30 p.m., to discuss goals and assessment procedures. Closed Session: April 23, 1997; 9:00 a.m. to 5:00 p.m.; April 24, 1997; 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 2:00 p.m. and 2:30 p.m. to 5:00 p.m., April 25, 1997; 8:30 a.m. to 12:00 p.m.; To review and evaluate Developmental Mechanism 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©, (4) and (6) of the Government in the Sunshine Act.

Dated: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8678 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Proposal Review Panel in Earth 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: Proposal Review Panel in Earth Sciences (1569).

Date and Time: April 24–25, 1997; 8:30 a.m. to 5:00 p.m.

Place: Argonne National Laboratory, Building 434A, 9700 South Cass Avenue, Argonne, IL 60439.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1558.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation & Facilities 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8684 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel for Geosciences; 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 for Geosciences (1756).

Date: April 21 & 22, 1997.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ms. Robin Reichlin, Program Director, Geophysics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1556.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate cooperative studies of the earths deep interior 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 proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resources Management, Acting Committee Management Officer.

[FR Doc. 97–8681 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Ethology; 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: Advisory Panel for Integrative Plant Biology (1160).

Date and Time: April 21–23, 1997, 8:30 am to 5:00 pm.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Part-Open.

Contact Person: Dr. Hans J. Bohnert, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230. Telephone: (703) 306–1422.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Integrative Plant Biology proposals as part of the selection process for awards. Open Session: April 22, 1997, 3:00 pm to 4:00 pm—To discuss research trends and opportunities in Integrative Plant Biology. Closed Session: April 21, 1997, 8:30 am to 5:30 pm; April 22, 1997, 8:30 am to 3:00 pm and 4:00 pm to 5:30 pm; April 23, 1997, 8:30 am to 2:00 pm. To review and evaluate Integrative Plant Biology 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8677 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; 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: Advisory Panel for Neuroscience (1158).

Date and Time: April 21 & 22, 1997; 9:00 a.m. to 6:00 p.m.

Place: Room 340, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Raymon Glantz, Program Director, Neuronal and Glial Mechanisms; Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 21, 1997; 4:00 p.m. to 5:00 p.m., To discuss research trends and opportunities in Neuronal and Glial Mechanisms. Closed Session: April 21, 1997; 9:00 a.m. to 4:00 p.m., 5:00 p.m. to 6:00 p.m.; April 22, 1997, 9:00 a.m. to 6:00 p.m.; To review and evaluate Neuronal and Glial Mechanisms 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8679 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Polar Programs; 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: Advisory Committee for Polar Program, (1130).

Date and Time: April 22, 1997; 8:30 am to 5:00 pm; April 23, 1997, 8:30 am to 5:00 pm; April 24, 1997, 8:30 am to 12:00 noon.

Place: National Science Foundation, 4201 Wilson Blvd., Room 370, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Jane Dionne, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1033.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Serves to provide expert advice to the Office of Polar Programs.

Agenda: The OPP Advisory Committee will meet to discuss the following agenda topics—integrating research and education, Science and Technology Center plans, U.S. Coast Guard/NSF interactions, NSF merit review process, USAP External Panel Report, Government Performance and Results Act, Committee of Visitors development, and International Council of Scientific Unions/ Polar Research Board (PRB).

Dated: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8682 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Social, Behavioral, and Economic 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: Special Emphasis Panel in Social, Behavioral, and Economics Sciences (#1766).

Date and Time: April 24–25, 1997, 9:00 a.m. to 6:00 p.m.

Place: Room 340 NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Keith Crank, Program Director for Statistics & Probability Program, Division of Mathematical Sciences, National Science Foundation, Room 1025, 4201 Wilson Boulevard, Arlington, VA. Telephone: (703) 306–1885.

Purpose of Meeting: To provide advice and recommendations concerning the scope of proposals submitted to NSF for financial support in Methods and Models for Integrated Assessment.

Agenda: To review and evaluate proposal scope and criteria as part of the selection process for awards.

Reason for Closing: The information being reviewed includes 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8687 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; 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 Undergraduate Education (1214).

Date and Time: April 23, 1997 (8:00 a.m. to 5:00 p.m.)

Place: Rooms 320, 340 & 360, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Terry Woodin, Program Director, Division of Undergraduate Education (DUE), Room 835, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Tel: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSF Collaboratives for Excellence in Teacher Preparation (CETP) panel meeting.

Reason for Closing: The proposals being reviewed includes 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: April 1, 1997.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–8683 Filed 4–3–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 140, ''Financial Protection Requirements and Indemnity Agreements''.

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

5. Who will be required or asked to report: Licensees authorized to operate reactor facilities in accordance with 10 CFR Part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70.

6. An estimate of the number of responses: Approximately one each for 180 licensees.

7. The estimated number of annual respondents: Approximately 180.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 853.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 140 of the NRC's regulations specifies information required to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, amended.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by May 5, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of March 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–8647 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 62—''Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities''.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Requests are made only when access to a non-federal low-level waste disposal facility is denied, which results in a threat to public health and safety and/or common defense and security.

5. Who will be required or asked to report: Generators of low-level waste who are denied access to a non-federal low-level waste facility.

6. An estimate of the number of responses: No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years.

7. The estimated number of annual respondents: No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 680 hours once every three years, or 227 annually.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 62 sets out the information which will have to be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202 634–3273.

Comments and questions should be directed to the OMB reviewer by May 5, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0143), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of March 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–8648 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company Salem Nuclear Generating Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–70 and DPR–75, issued to Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would revise Technical Specification (TS) 3.4.3, ''Relief Valves,'' for Salem Unit 1, and TS 3.4.5, ''Relief Valves,'' for Salem Unit 2, to ensure that the automatic

capability of the power operated relief valves (PORVs) to relieve pressure is maintained when these valves are isolated by closure of the block valves. A March 14, 1997, supplement to the application proposes additional actions to eliminate single failure vulnerabilities in the PORV circuitry and upgrade the circuitry to qualify the PORVs as safety related.

This notice supersedes the previous notice dated February 3, 1997, published in the **Federal Register** on February 7, 1997 (62 FR 5861) in its entirety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 5, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license 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 the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. 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 a 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 amendment 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.

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 John F. Stolz, Director, Project Directorate I–2: 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 Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 31, 1997, as supplemented March 14, 1997, which is 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 Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 31st day of March 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–8649 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–348]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–2 issued to the Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Unit No. 1, located in Houston County, Alabama.

The proposed amendment would modify Technical Specification 3/4.4.9, ''Specific Activity,'' and the associated Bases to reduce the limit associated with dose equivalent iodine-131. The steady-state dose equivalent iodine-131 limit would be reduced by 40 percent from .5 [micro]Curie/gram to .3 [micro]Curie/gram.

Before issuance of the proposed license amendment, the Commission will have made findings 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 amendment request involves 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 amendment 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. Operation of Farley Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reduction in the dose equivalent iodine limits, both steady-state and transient, will not increase the probability of any accident evaluated since no physical changes to the plant are being made. The consequences of any accident previously evaluated will not be increased since the activity of the primary coolant is being decreased.

2. The proposed license amendment [does] not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction in the dose equivalent iodine limits, both steady-state and transient, will not create the possibility of a new or different kind of accident from any accident previously evaluated since no physical changes to the plant are being made. The accidents of concern continue to be those that have previously been analyzed.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The calculated potential radiological consequences from the main steam line break accident remain within the regulatory exposure guidelines. Consequently, there is no reduction in any 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 amendment request involves 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 amendment 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 amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves 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 May 5, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license 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 the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. 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 amendment 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 amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 Herbert N. Berkow: 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 M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, 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 amendment dated March 23, 1997, which is 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, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 31st day of March 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. 97–8650 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 72–16 (50–338, –339]

Virginia Electric and Power Company, Notice of Issuance of Environmental Assessment and Finding of No Significant Impact for the Independent Spent Fuel Storage Installation at the North Anna Nuclear Power Station

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a materials license under the requirements of Title 10 of the Code of Federal Regulations, Part 72 (10 CFR Part 72), to Virginia Electric and Power Company (the applicant), authorizing the construction and operation of an independent spent fuel storage installation (ISFSI) located at its North Anna Nuclear Power Station in Louisa County, Virginia. The Commission's Spent Fuel Project Office in the Office of Nuclear Material Safety and Safeguards has completed its environmental review in support of the issuance of a materials license. The ''Environmental Assessment (EA) Related to Construction and Operation of the North Anna Independent Spent Fuel Storage Installation'' has been issued in accordance with 10 CFR Part 51.

Summary of Environmental Assessment

Description of the Proposed

Action: The proposed licensing action would authorize the applicant to construct and operate a dry storage ISFSI. The ISFSI is to provide additional interim storage of spent nuclear fuel generated from the continued operation of the North Anna Nuclear Power Station Units 1 and 2. The proposed ISFSI spent fuel cask is designed by Transnuclear, Inc. The spent fuel cask, referred to as TN–32, is a smooth right-circular cylinder of multi-wall construction that holds a fuel basket designed to accommodate 32 pressurized water reactor (PWR) fuel assemblies. The license for an ISFSI under 10 CFR Part 72 is issued for 20 years, but the applicant may apply to the Commission to renew the license, if necessary, prior to its expiration.

Need for the Proposed Action

The spent fuel assemblies generated from the operation of the North Anna Nuclear Power Station Units 1 and 2 are currently stored onsite in a spent fuel pool. Under the current refueling schedule for the North Anna Units 1 and 2, the capability to discharge an entire core (157 assemblies) will be lost in early 1999, and the spent fuel pool will be at its capacity by late 2000. Therefore, additional spent fuel storage capacity is needed in 1998. Delay in the

availability of this additional storage capacity may cause a reduction in the power operation or temporary shutdown of Units 1 and 2. The applicant's proposed action would provide the additional capacity required to store spent fuel that is expected to be generated at the North Anna Nuclear Power Station through the end of its currently licensed operating life.

Environmental Impacts of the Proposed Action

Construction of the proposed ISFSI will affect approximately 4.4 ha (11 acres) of the 422 ha (1,043 acres) site area which is committed to nuclear power plant development. With good construction practices, the potential for fugitive dust, erosion, and noise impacts typical of the planned construction activities can be controlled to insignificant levels. The only resources committed irretrievably are the steel, concrete, and other construction materials in the ISFSI slab and storage cask. Therefore, no significant construction impacts are anticipated.

The routine operation of the proposed ISFSI involves only dry storage of spent nuclear fuel that is sealed in containers (TN–32 casks); there will be no gaseous or liquid effluents released to the environment. External exposure to direct and scattered radiation is the primary pathway of radiation exposure to workers and the general public. The dose to the nearest resident from routine ISFSI operation is estimated to be about 10 μSv/yr (1.0 mrem/yr). The combined dose to the nearest resident from the ISFSI and the nuclear power plant operation is about 58 μSv/yr (5.8 mrem/yr). These doses are well below the 250 μSv/yr (25 mrem/yr) limit specified in 10 CFR 72.104. These doses are a small fraction of the natural background from terrestrial and cosmic radiation of about 1,100 μSv/yr (110 mrem/yr) in the State of Virginia.

The dose to an individual at the nearest site boundary from a hypothetical accident has been calculated to be 0.49 mSv (0.049 rem) (whole-body) which is well below the 50 mSv (5 rem) criteria set forth in 10 CFR 72.106(b) and by the U.S. Environmental Protection Agency's protective action guidelines.

There are no nonradiological impacts resulting from the routine ISFSI operation. The operational noise associated with the proposed action will result from the transfer of casks from the North Anna Nuclear Power Station protected area to the ISFSI. Noise associated with this operation is onsite and is expected to be minimal; no adverse impacts to the general public are anticipated.

Alternatives to the Proposed Action

If a permanent Federal repository were available, the preferred alternative would be to ship spent fuel to the repository for disposal. The Department of Energy is currently working to develop a repository, as required under the Nuclear Waste Policy Act, but is not likely to have a licensed repository ready to receive spent fuel before 2010. Although DOE recommended that a Monitored Retrievable Storage (MRS) facility be constructed and operated for interim storage, this proposed action has not taken place so far. Given the uncertainties of schedules for a repository and MRS, these alternatives, therefore, do not meet the near-term interim storage needs of the applicant. Given these conditions, a number of alternatives for the storage of spent fuel prior to the selection of the dry storage ISFSI are discussed in the EA. These alternatives included: (a) expansion of the existing pool, (b) construction of a new storage pool, (c) increasing capacity of the existing pool, (d) spent fuel rod consolidation, (e) transshipment to Surry Nuclear Power Station ISFSI, (f) reduction in rate of spent fuel generation by using high burnup fuel or by reduction in operation, and (g) no action alternative. As discussed in the EA, the Commission has concluded there are no significant environmental impacts associated with the proposed dry storage ISFSI, and other alternatives were not chosen because of the time required for the design and licensing, its high cost, or the storage limitation for expanding existing pool storage at the North Anna Nuclear Power Station.

Agencies and Persons Contacted

Officials from the State of Virginia Bureau of Radiological Health, as well as the Department of Environmental Quality, were contacted in preparing this assessment.

Finding of No Significant Impact

The staff has reviewed the environmental impacts of the proposed ISFSI relative to the requirements set forth in 10 CFR Part 51 and prepared an EA. Based on the EA, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that issuance of a license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31 and 51.32, a finding of no significant impact is appropriate and an environmental impact statement need not be prepared for the issuance of a materials license for the North Anna ISFSI.

For further details related to this proposed action, the EA and the application, dated May 9, 1995, as supplemented, are available for public inspection, and for copying for a fee, at the NRC Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room for North Anna located at the University of Virginia, Alderman Library, Charlottesville, Virginia 22903.

Dated at Rockville, Maryland, this 28th day of March 1997.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–8646 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on April 15–16, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday April 15, 1997—1:00 p.m. until the conclusion of business
Wednesday April 16, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will discuss generic letters regarding steam generator tube inspection techniques, effective use of ultrasonic testing techniques in inservice inspection programs, degradation of steam generator internals, and degradation of reactor vessel head penetrations. The Subcommittee will also discuss the status of issues related to reactor pressure vessel integrity. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked

only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

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 the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 31, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–8645 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to 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 Commission'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.

Revision 1 of Regulatory Guide 5.15, ''Tamper-Indicating Seals for the Protection and Control of Special Nuclear Material,'' describes features of systems and types of security seals that are acceptable to the NRC staff for tamper-safing containers of special nuclear material. A tamper-indicating seal is a device used to detect unauthorized removal of material.

The NRC has verified with the Office of Management and Budget the determination that this regulatory guide is not a major rule.

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. 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.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301)415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. 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 20th day of March 1997.

For the Nuclear Regulatory Commission.

David L. Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 97–8651 Filed 4–3–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Dunham-Bush, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request by Dunham-Bush, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Sheet Metal Workers' National Pension Fund. A notice of the request for an exemption from the requirement was published on December 20, 1996 (61 FR 67355). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The non-confidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas T. Kim, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; telephone 202–326–4020 ext. 3581 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (the ''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Consideration 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 4204.12–4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the three regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On December 20, 1996 (61 FR 67355), the PBGC published a notice of request from Dunham-Bush, Inc. (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its January 6, 1995 purchase of certain assets of Allagash Fluid Controls, Inc., which was formerly known as Dunham-Bush, Inc. (the ''Seller''). No comments were received in response to the notice during the comment period.

According to the request, on January 6, 1995, the Buyer acquired certain assets of the Seller. The Seller was obligated to contribute to the Sheet Metal Workers' National Pension Plan (the ''Plan''). The Buyer has assumed the Seller's obligation to contribute to the Plan at the purchased operations, and continues to make contributions for substantially the same number of contribution base units as the Seller. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay withdrawal liability.

The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations sold is $3,000,000. The amount of the bond/escrow required under section 4204(a)(1)(B) is $545,409.29.

The Buyer submitted its financial statement as of January 26, 1996. According to that statement, the Buyer's net tangible assets are just over $20 million, which is in excess of the unfunded vested benefits allocable to the Seller.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement. The granting of an exemption from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 26th day of March, 1997.

John Seal,

Acting Executive Director.

[FR Doc. 97–8606 Filed 4–3–97; 8:45 am]

BILLING CODE 7708–01–P

SECURITES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Existing Collection: Rule 17a–6, SEC File No. 270–433, OMB Control No. 3235–new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of the following rule:

Rule 17a–6 (17 CFR 240.17a–6) permits national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board (collectively, ''SROs'') to destroy or convert to microfilm or other recording media records maintained under Rule 17a–1, if they have filed a record destruction plan with the Commission and the Commission has declared such plan effective.

There are 25 SROs: 8 national securities exchanges, 1 national securities associations, 15 registered clearing agencies, and the Municipal Securities Rulemaking Board. These respondents file no more than one record destruction plan per year, which requires approximately 40 hours for each respondent. Thus, the total compliance burden is 40 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for these respondents of $4,000 per year (40 hours @ $100).

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C.

20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–8653 Filed 4–3–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26698]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 28, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 21, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and or permitted to become effective.

American Electric Power Company, et al. (70–8779)

American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, and its subsidiaries, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, Appalachian Power Company, 40 Franklin Road, Roanoke, Virginia 24022, Columbus Southern Power Company, 215 North Front Street, Columbus, Ohio 43215, Indiana Michigan Power Company, One Summit Square, Fort Wayne, Indiana 46801, Kentucky Power Company, 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company, 422 Broad Street, Kingsport, Tennessee 37660, Ohio Power Company, 339 Cleveland Avenue, S.W., Canton, Ohio 44702, and Wheeling Power Company, 51–16th Street, Wheeling, West Virginia 26003, have filed a post-effective amendment under sections 6, 7 and 12(b) of the Act, and rule 45 under the Act, in connection with their previously filed application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 90 and 91 under the Act.

By orders dated September 13, 1996 (HCAR No. 26572) (''Initial Order'') and September 27, 1996 (HCAR No. 26583), AEP was authorized to form one or more direct or indirect nonutility subsidiaries (''New Subsidiaries'') to broker and market electric power, natural and manufactured gas, emission allowances, coal, oil, refined petroleum products and natural gas liquids (''Energy Commodities''). The Initial Order also authorized AEP to guarantee through December 31, 2000 up to $50 million of debt and up to $200 million of other obligations of the New Subsidiaries (''Guarantee Authority''). The Initial Order stated that obligations of the New Subsidiaries (other than debt) might take the form of bid bonds or other direct or indirect guarantees of contractual or other obligations.

With the adoption of rule 58,[1] the acquisition of securities of or other interests in Energy-Related Companies (as defined in the rule), including the marketing and brokering of Energy Commodities, subject to certain limitations, is exempt from the requirement of prior Commission approval under the Act. AEP states that any of the New Subsidiaries may convert to an Energy-Related Company so that such New Subsidiary could not only broker and market Energy Commodities, but also could offer all the other energy-related services permitted by the rule.

AEP requests that the Guarantee Authority be expanded so that AEP could guarantee the debt and other obligations of the New Subsidiaries for all Energy-Related Company activities.

New Century Energies, Inc. (70–9005)

New Century Energies, Inc. (''NCE''), 1225 Seventeenth Street, Denver, Colorado 80202, a Delaware corporation not currently subject to the Act, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and rules 42 and 54 thereunder.[2]

NCE proposes to implement a shareholder rights plan and to enter into a Rights Agreement (''Agreement'') with an agent to be named. The Board of Directors of NCE (''Board'') proposes to declare a dividend distribution of one right (''Right'') for each outstanding share of common stock, $1.00 par value, of NCE (''Common Stock'') to shareholders of record at the close of business on a record date yet to be established (''Record Date''). Each Right would entitle the registered holder to purchase from NCE one one-hundredth of a share of Series A Junior Participating Preferred Stock (''Preferred Stock'') at a price to be determined by the Board, subject to adjustment (''Purchase Price'').

Until the earliest to occur of (i) ten days following the date (''Shares Acquisition Date'') of the public announcement that a person or group of persons (''Acquiring Person'') has acquired, or obtained the right to acquire, beneficial ownership of Common Stock or other voting securities (''Voting Stock'') that have 10% or more of the voting power of the outstanding shares of Voting Stock or (ii) ten days (or such later date as may be determined by action of the Board prior to the time any person or group of persons becomes the Acquiring Person) following the commencement or announcement of an intention to make a tender offer or exchange offer, the consummation of which would result in such person acquiring, or obtaining the right to acquire, beneficial ownership of Voting Stock having 10% or more of the voting power of the outstanding shares of Voting Stock (the earlier of such dates being called the ''Distribution Date''), the Rights will be evidenced, with respect to any of the Common Stock certificates outstanding as of the Record Date, by such Common Stock certificates. Until the Distribution Date (or earlier redemption or expiration of the Rights), the Rights will be

[1] HCAR No. 26667 (February 14, 1997), 62 F.R. 7900 (February 20, 1997). The rule became effective on March 24, 1997.

[2] NCE has previously filed an application-declaration under section 9(a)(2) of the Act to acquire all of the outstanding voting securities of Public Service Company of Colorado (''PSC''), Southwestern Public Service Company (''SPS'') and Cheyenne Light, Fuel and Power Company (''CLFP''), each a public utility company. Following the consummation of the transactions described in that application-declaration, NCE will register as a holding company under the Act.

transferable only with the Common Stock, and new Common Stock certificates issued after the Record Date will contain a notation incorporating the Agreement by reference. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights (''Rights Certificates'') will be mailed to holders of record of Common Stock as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire at the close of business on the tenth anniversary of the Record Date, unless earlier redeemed or exchanged by NCE as described below.

In the event that a person becomes an Acquiring Person, each holder of a Right will have the right to receive, upon exercise, Common Stock (or, in certain circumstances, cash, property or other securities of NCE) having a value equal to two times the exercise price of the Right then in effect. However, all Rights that are, or under certain circumstances were, beneficially owned by any Acquiring Person will be null and void.

In the event that, at any time following the Shares Acquisition Date, (i) NCE is acquired in a merger or other business combination transaction, or (ii) 50% or more of NCE's assets or earning power are sold or transferred, each holder of a Right (except Rights which previously have been voided as set forth above) shall thereafter have the right to receive, upon exercise, common stock of the acquiring company having a value equal to two times the exercise price of the Right.

The Purchase Price payable, and the number of shares of Preferred Stock (or Common Stock or other securities, as the case may be) issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights or warrants to subscribe for or purchase shares of the Preferred Stock or convertible securities at less than the then current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular periodic cash dividends or dividends payable in Preferred Stock) or of subscription rights or warrants (other than those referred to above).

With certain exceptions, no adjustment in the Purchase Price will be required until the earlier of (i) three years from the date of the event giving rise to such adjustment or (ii) the time at which cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional shares of Preferred Stock will be issued and, in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Stock on the last trading date prior to the date of exercise.

NCE may redeem the Rights in whole, but not in part, at a price of $0.001 per Right (''Redemption Price''), payable in cash or stock at any time prior to 5:00 p.m. on the tenth day following the Shares Acquisition Date, subject to extension for up to an additional 20 days by the Board, with the concurrence of a majority of Independent Directors (as hereinafter defined). Under certain circumstances set forth in the Agreement, the decision to redeem shall require the concurrence of a majority of the Independent Directors. An ''Independent Director'' means any member of the Board who either (a) was a member on the date of the Agreement, or (b) is subsequently elected to the Board (x) if such election was conducted in accordance with Article V(B)(1) of NCE's Restated Certificate of Incorporation, (y) if such person was nominated pursuant to the method described in Article V(E) of NCE's Restated Certificate of Incorporation, or (z) if such person is recommended or approved by a majority of the Independent Directors. The term Independent Director shall not include an Acquiring Person or any representative thereof.

Immediately upon the action of the Board electing to redeem the Rights, NCE shall make announcement thereof and the only right of the holders of Rights will be to receive the Redemption Price.

At any time after a person becomes an Acquiring Person, the Board (with the concurrence of a majority of the Independent Directors) may exchange the Rights (other than Rights owned by an Acquiring Person, which become void), in whole or in part, at an exchange ratio of one share of Common Stock (or a fraction of a share of Preferred Stock having the same market value as one share of Common Stock) per Right, subject to adjustment.

Any of the provisions of the Agreement may be amended by the Board without the consent of the holders of the Rights prior to the Distribution Date. Thereafter, the Agreement may be amended by the Board (in certain circumstances, with the concurrence of the Independent Directors) in order to cure any ambiguity, defect or inconsistency, or to make changes which do not adversely affect the interests of holders of Rights (excluding the interest of any Acquiring Person); provided, however, that no supplement or amendment may be made on or after the Distribution Date which changes those provisions relating to the principal economic terms of the Rights.

The Preferred Stock will rank junior to all other series of NCE's preferred stock with respect to payment of dividends and as to distribution of assets in liquidation. Each share of Preferred Stock will have a quarterly dividend rate per share equal to the greater of $1.00 or 100 times the per share amount of any dividend (other than a dividend payable in shares of Common Stock or a subdivision of the Common Stock) declared from time to time on the Common Stock, subject to certain adjustments. The Preferred Stock will not be redeemable. In the event of liquidation, the holders of the Preferred Stock will be entitled to receive a preferred liquidation payment per share of an amount equal to 100 times the Purchase Price (plus accrued and unpaid dividends) or, if greater, an amount equal to 100 times the payment to be made per share of Common Stock, subject to certain adjustments. Generally, each share of Preferred Stock will vote together with the Common Stock and any other series of cumulative preferred stock entitled to vote in such manner and will be entitled to 100 votes, subject to certain adjustments. In the event of any merger, consolidation, combination or other transaction in which shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or other property, each share of Preferred Stock will be entitled to receive 100 times the aggregate amount of stock, securities, cash and/or other property, into which or for which each share of Common Stock is changed or exchanged, subject to certain adjustments. The foregoing dividend, voting and liquidation rights of the Preferred Stock are protected against dilution in the event that additional shares of Common Stock are issued pursuant to a stock split or stock dividend or distribution. Because of the nature of the Preferred Stock's dividend, voting, liquidation and other rights, the value of the one one-hundredth of a share of Preferred Stock purchasable with each Right is intended to approximate the value of one share of Common Stock.

Cinergy Corp., et al. (70–9011)

Cinergy Corp. (''Cinergy''), a registered holding company, and Cinergy Investments, Inc.

(''Investments''), its wholly-owned non-utility subsidiary (collectively ''Applicants''), both located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 45, 53, and 54 thereunder.

Applicants are currently authorized, under the terms of orders and supplemental orders issued under File Nos. 70–8477 [HCAR Nos. 26159 (November 18, 1994) and 26477 (February 23, 1996)], 70–8521 [HCAR Nos. 26215 (January 11, 1995) and 26488 (March 12, 1996)], and 70–8589 [HCAR Nos. 26376 (September 21, 1995) and 26486 (March 8, 1996)] (collectively, the ''Prior Orders''), among other things, to use the proceeds of the issuance of short term debt and common stock to invest, directly or indirectly through one or more special purpose subsidiaries or project parents, in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), and to issue guarantees of the obligations of such entities, provided that the total of the net proceeds used for such investments and guarantees outstanding at any one time shall not, when added to Cinergy's ''aggregate investment'' (as defined in rule 53(a) under the Act) in all EWGs and FUCOs, exceed 50% of Cinergy's ''consolidated retained earnings'' (as defined in rule 53(a)). This investment limitation is consistent with the investment limitation contained in rule 53(a)(1).

Applicants request the Commission to modify this limitation, and exempt them from the requirements of rule 53(a)(1), to permit Cinergy to use the net proceeds of common stock sales and borrowings to acquire, directly or indirectly, the securities of, or other interests in, EWGs and FUCOs, and to issue guarantees of the obligations of such entities (all as authorized by and in accordance with the terms of the Prior Orders) in an aggregate amount that, when added to Cinergy's direct and indirect ''aggregate investment,'' as defined, in all EWGs and FUCOs, would not at any time exceed 100% of Cinergy's ''consolidated retained earnings,'' as defined (''100% authority'').[3] The current amount of Cinergy's ''aggregate investment,'' as defined, in EWGS and FUCOs (approximately $495 million as of January 31, 1997) represents approximately 50% of its ''consolidated retained earnings,'' as defined (approximately $990 million as of December 31, 1996). Increasing this limitation as Applicants propose would allow financing of additional investments in EWGs and FUCOs of approximately $495 million based on Cinergy's consolidated retained earnings as of December 31, 1996.

Applicants state that Cinergy is committed to making additional investments in EWGs and FUCOs, primarily because (1) current projections indicate that for at least the next eight years Cinergy will not need to make any new equity investment in any of its utility subsidiaries; (2) acquisitions of EWGs and FUCOs give Cinergy the opportunity to continue to grow through reinvestment of retained earnings in an industry sector that Cinergy has decades of experience in, while at the same time diversifying overall asset risk; and (3) Cinergy has purposely invested in utility systems in foreign countries where deregulation of and competition in retail and wholesale electricity markets is more fully developed than in the United States in order to gain experience with deregulated markets that will enhance Cinergy's ability to make its core domestic utility operations more competitive and efficient in the future as the United States moves toward deregulation and increased competition. Applicants also describe comprehensive procedures that Cinergy has established to identify and address risks involved in EWG and FUCO investments.

Cinergy states that the use of financing proceeds and guarantees to make investments in EWGs and FUCOs to the proposed increased level will not have a substantial adverse impact on the financial integrity of the Cinergy system or an adverse impact on any utility subsidiary of Cinergy or its customers or on the ability of the affected state commissions to protect such customers. Applicants also state that Cinergy will not seek recovery through higher rates to its utility subsidiaries' customers in order to compensate Cinergy for any possible losses that it may sustain on investments in EWGs and FUCOs or for any inadequate returns on such investments. In addition, Cinergy will not cause or permit its utility subsidiaries to mortgage, pledge or otherwise encumber or use as collateral any of their properties or assets in connection with any direct or indirect acquisition by Cinergy of any interest in any EWG or FUCO.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–8654 Filed 4–3–97; 8:45 am]

BILLING CODE 8010–01–M

[3] Applicants request that the 100% authority sought herein in connection with the Prior Orders be extended to apply as well to the use of proceeds from the issuance and sale of debt securities by Cinergy pursuant to the authority sought in the pending application in file no. 70–8993 and to another application Cinergy expects to file shortly seeking authority to issue and sell additional securities, including common stock and short-term notes, the proceeds of which would be used to invest in, among other things, EWGs and FUCOs.

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Request for Withdrawal of Application—0960–0015. In certain situations receiving social security benefits may be to the applicant's disadvantage and they wish to withdraw their application. The information collected on Form SSA–521 is used by the Social Security Administration to process a request for withdrawal of an application for benefits. The respondents are individuals who file a claim and later wish to withdraw it.

Number of Respondents: 100,000.

Frequency of Response: 5 minutes.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

2. SSA/DDS Cost-Effectiveness Measurement System Data Reporting Form—0960–0384. The information collected on Form SSA–1461 is used by the Social Security Administration (SSA) to analyze and evaluate the costs incurred by the State Disability Determination Services (DDS) in making determinations of disability for SSA. The data is also used in determining funding levels. The respondents are the State DDS offices.

Number of Respondents: 52.

Frequency of Response: 4 per year.

Average Burden Per Response: 6 hours.

Estimated Annual Burden: 1,248 hours.

3. Claim for Amounts Due in the Case of a Deceased Beneficiary—0960–0101. Section 204(d) of the Social Security Act provides that if a beneficiary dies before payment of Social Security title II benefits has been completed, the amount due will be paid to persons meeting specified qualifications. The information collected on Form SSA–

1724 is used by the Social Security Administration to determine whether an individual is entitled to the underpayment. The respondents are applicants for the underpayment of a deceased beneficiary.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 50,000 hours.

4. Supplement to Claim of Person Outside the United States—0960–0051. The information collected on Form SSA–21 is used to determine the continuing entitlement to Social Security benefits and the proper benefit amounts of alien beneficiaries living outside the United States. It is also used to determine whether benefits are subject to tax withholding. The respondents are individuals entitled to Social Security benefits who are, will be, or have been residing outside the United States.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,917 hours.

5. Statement of Care and Responsibility for Beneficiary—0960–0109. When an individual requests to act as representative payee for someone not in their custody, the Social Security Administration must determine if this individual is the most qualified to serve in the beneficiary's best interests. The information collected on Form SSA–788 is used to corroborate the statements of concern made by the representative payee applicant and to identify other potential representative payees. The respondents are individuals who have custody of the beneficiaries for whom someone else has filed to be the representative payee.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden of Response: 10 minutes.

Estimated Annual Burden: 21,667 hours.

6. Statement of Claimant or Other Person—0960–0045. Form SSA–795 is completed by Social Security or SSI applicants when additional information is needed and there is no standard form which collects the information. The information is used by the Social Security Administration to process claims for benefits. The respondents are applicants for Social Security or SSI benefits.

Number of Respondents: 305,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 75,375 hours.

7. Application for Disability Insurance Benefits—0960–0060. The information collected on Form SSA–16 by the Social Security Administration is used to determine an applicant's entitlement to Social Security disability benefits. The respondents are applicants for Social Security disability benefits.

Number of Respondents: 1,000,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 333,333.

8. Statement for Determining Continuing Eligibility for Supplemental Security Income Payment—0960–0145. The information collected on Form SSA–8202 is used by the Social Security Administration to determine a beneficiary's continuing eligibility for and the amount of their SSI payments. The information collected also assists SSI recipients to obtain food stamps and is used by agencies administering Medicaid programs in ascertaining the legal liability of third parties to pay for care and services. The respondents are recipients of SSI benefits.

Number of Respondents: 818,000.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 149,967 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM; Attn: Judith T. Hasche; 6401 Security Blvd., 1–A–21 Operations Bldg.; Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4123 or write to her at the address listed above.

Dated: March 31, 1997.

Frederick W. Brickenkamp,

Forms Management Officer, Social Security Administration.

[FR Doc. 97–8564 Filed 4–3–97; 8:45 am]

BILLING CODE 4190–29–P

Testing Modifications to the Disability Determination Procedures; Federal Processing Center Testing

AGENCY: Social Security Administration.

ACTION: Notice of the test site and the duration of testing involving modifications to the disability determination procedures.

SUMMARY: The Social Security Administration (SSA) is announcing the location and the duration of additional testing that it will conduct under the current rules at 20 CFR §§ 404.906, 404.943, 416.1406, and 416.1443. Those rules authorize the testing of several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and claims for supplemental security income (SSI) based on disability under title XVI of the Act. This notice announces the test site and duration of testing involving a combination of features of the proposed redesigned disability process. The notice also describes additional features that will allow us to test the effectiveness of processing cases under a combination of the models in a Federal processing center.

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Disability Models Team Leader, Office of Disability, Disability Process Redesign Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–965–9203.

SUPPLEMENTARY INFORMATION: Current regulations at 20 CFR §§ 404.906, 404.943, 416.1406, and 416.1443 authorize us to test different modifications to the disability determination procedures. We describe the use of all four features of the testing modifications to the disability determination procedures as the full process model. Those modifications are: the use of a single decisionmaker who may make the disability determination without requiring the signature of a medical consultant; the conducting of a predecisional interview in which a claimant, for whom SSA does not have sufficient information to make a fully favorable determination or the evidence requires an initial determination denying the claim, can present additional information to the decisionmaker; the elimination of the reconsideration step in the administrative review process; and the use of an adjudication officer who will conduct prehearing procedures and, if appropriate, will issue a decision wholly favorable to the claimant.

We intend to test the full process model in a Federal processing center. The location for this test will be: Social Security Administration, Western Program Service Center, 2121 Nevin Avenue, Richmond, California, 94802.

We may add other Federal sites later. If we add other Federal sites, we will publish another notice in the **Federal Register** identifying the added sites. The test in Richmond will involve claims by individuals who wish to file by telephone. These cases will be referred to the Richmond processing center by teleservice centers that service residents of Arizona.

This test will combine the four process modifications mentioned above, plus two features designed to maximize the resources of a Federal processing center: having a two-person team complete the application interview by telephone; and effectuating, in the processing center, the payment of benefits to claimants who are found disabled. We will begin selecting cases for processing in this test on or about April 28, 1997, will continue to select cases for approximately one year, and may continue to have cases processed for an additional six months. In addition, we may choose to extend the test to obtain additional data. We will publish another notice in the **Federal Register** if we extend the duration of the test. The adjudication officers under this model will process cases as they are doing in those States in which that feature is being tested separately. (Refer to 20 CFR §§ 404.943 and 416.1443.) The single decisionmaker will process cases as single decisionmakers are doing in those States in which that feature is being tested separately (see 20 CFR §§ 404.906(b)(2) and 416.1406(b)(2)), except that the single decisionmaker in this model also will assist in the claims interview and will offer a predecisional interview to a claimant for whom a fully favorable determination cannot be made based on the initial information obtained. If a claimant is dissatisfied with the initial determination, he or she may appeal directly to an administrative law judge. The adjudication officer will be the claimant's primary point of contact before a hearing is held with an administrative law judge. Claims authorizers will participate in the telephone claims interview and will effectuate payment to claimants who are found disabled.

Dated: March 28, 1997.

Carolyn W. Colvin,

Deputy Commissioner for Programs and Policy.

[FR Doc. 97–8711 Filed 4–3–97; 8:45 am]

BILLING CODE 4190–29–P

Testing Modifications to the Disability Determination Procedures; Disability Determination Services Full Process Model

AGENCY: Social Security Administration.

ACTION: Notice of the additional test sites and the duration of tests involving modifications to the disability determination procedures.

SUMMARY: The Social Security Administration (SSA) is announcing the locations and the duration of additional tests that it will conduct under the current rules at §§ 404.906, 404.943, 416.1406, and 416.1443. Those rules authorize the testing of several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and claims for supplemental security income (SSI) payments based on disability under title XVI of the Act. This notice announces the test sites and duration of tests involving a combination of features of the proposed redesigned disability process.

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Disability Models Team Leader, Office of Disability, Disability Process Redesign Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–965–9203.

SUPPLEMENTARY INFORMATION: Current regulations at §§ 404.906, 404.943, 416.1406, and 416.1443 authorize us to test different modifications to the disability determination procedures. The tests are designed to provide us with information so that we can determine the effectiveness of the models in improving the disability process. On or about April 7, 1997, we will begin tests of a full process model that combines four features of the proposed redesigned disability process. These features are: The use of a single decisionmaker who may make the disability determination without requiring the signature of a medical consultant; the conducting of a predecisional interview in which a claimant, for whom SSA does not have sufficient information to make a fully favorable determination or the evidence requires an initial determination denying the claim, can present additional information to the decisionmaker; the elimination of the reconsideration step in the administrative review process; and the use of an adjudication officer who will conduct prehearing procedures and, if appropriate, issue a decision wholly favorable to the claimant. We plan to test this model in eight States. We will select cases for evaluation of these tests for approximately nine months, and may continue to have cases processed for another six months. In addition, we may choose to extend the test to obtain additional data. We will publish another notice in the **Federal Register** if we extend the duration of the test. For the purpose of these tests, the single decisionmaker will be an employee of the State agency that makes disability determinations for us, while the adjudication officer will be either a State employee or a Federal employee. The sites selected represent a mix of geographic areas, case loads, and both Federal and State employees. The adjudication officer under this model will process cases as adjudication officers are doing in those States in which that feature is being tested separately. (Refer to **Federal Register**, February 1, 1996 (61 FR 3757).) The single decisionmaker will process cases as single decisionmakers are doing in those States in which that feature is being tested separately (see **Federal Register**, May 3, 1996 (61 FR 19969)), except that the single decisionmaker in this combined model will offer a predecisional interview to a claimant for whom a fully favorable determination cannot be made based on the initial information obtained. If a claimant is dissatisfied with the initial determination, he or she may appeal directly to an administrative law judge. The adjudication officer will be the claimant's primary point of contact before a hearing is held with an administrative law judge. Tests of the model will be held at the following locations: *COM007*

- Disability Determination Services, Division of Rehabilitation Services, Department of Social Services, 10065 Harvard Avenue, Denver, CO 80231–5941;
- Disability Adjudication Section, Division of Rehabilitation, Clark Harrison Building, 330 W. Ponce De Leon Avenue, Decatur, GA 30030;
- Office of Disability Determinations, New York State Department of Social Services, 99 Washington Avenue, Room 1239, Albany, NY 12260;
- Office of Disability Determinations, New York State Department of Social Services, 300 Cadman Plaza West, 13th Floor, Brooklyn, NY 11201–2701;
- Office of Disability Determinations, New York State Department of Social Services, Ellicott Square Building, Room 664, 295 Main Street, Buffalo, NY 14203–2412;
- Bureau of Disability Determination, Office for Collections and Compensation, Room 220—Central

Operations, 1171 South Cameron Street, Harrisburg, PA 17104–2594;

• Disability Determination Division, South Carolina Vocational Rehabilitation Department, 1709 Mobile Avenue, West Columbia, SC 29170;

• Disability Determination Section, Division of Rehabilitation Services, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, Nashville, TN 37248–1000;

• Disability Determination Services for SSA, Office of Rehabilitation, Utah State Office of Education, 555 E. 300 South, Salt Lake City, UT 84102; and

• Disability Determination Bureau, Division of Health, Department of Health and Family Services, 722 Williamson Street, Madison, WI 53703.

All cases processed under the full process model in the State of Pennsylvania will be adjudicated at the initial level by single decisionmakers at the Harrisburg site mentioned above. However, appeals of these cases will be processed by adjudication officers at one of two locations. One location is the Harrisburg site. The other site is:

• Bureau of Disability Determination, Office for Collections and Compensation, 264 Highland Park Boulevard, Wilkes-Barre, PA 18702.

Not all cases received in the test sites listed above will be handled under the test procedures. However, if a claim is selected to be handled as part of the test, the claim will be processed under the procedures established under the final rules cited above.

Dated: March 28, 1997.

Carolyn W. Colvin,

Deputy Commissioner for Programs and Policy.

[FR Doc. 97–8712 Filed 4–3–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 97–02–06 established the currently effective two-month SFFL applicable through March 31, 1997.

In establishing the SFFL for the two-month period beginning April 1, 1997, we have projected non-fuel costs based on the year ended December 31, 1996 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 97–3–45 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.4871
Latin America—1.4755
Pacific—1.6093

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Date: March 31, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–8568 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

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 the revenue from a Passenger Facility Charge at Bradley International 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 May 5, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, Connecticut Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT. 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a Passenger Facility Charge (PFC) at Bradley International 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 March 12, 1997, the FAA determined that the application to impose the revenue from a PFC submitted by the State of Connecticut was substantially complete within the requirements of § 158.25 part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than June 30, 1997.

The following is a brief overview of the impose application.

PFC Project #: 97–06–I–00–BDL.

Level of the proposed PFC: $3.00.

Proposed Charge effective date: September 1, 1997.

Estimated charge expiration date: April 1, 1999.

Estimated total net PFC revenue: $12,602,000

Brief description of projects:

Construction of New Fire Station

Construction of Glycol Collection Facility

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

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 Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on March 26, 1997.

Bradley A. Davis,

Assistant Manager, Airports Division, New England Region.

[FR Doc. 97–8616 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application impose and use the revenue from a Passenger Facility Charge (PFC) at Sonoma County Airport, Santa Rosa, CA

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 Sonoma County 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 May 5, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David E. Andrews, Director of Aviation, Sonoma County Airport, at the following address: 2200 Airport Blvd., Santa Rosa, CA 95403. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sonoma County Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2806. 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 Sonoma County 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 March 20, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Sonoma County Airport 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 July 3, 1997. The following is a brief overview of the impose and use application number 97–03–C–00–STS:

Level of proposed PFC: $3.00.

Charge effective date: October 1, 1997.

Estimated charge expiration date: April 1, 2000.

Total estimated PFC revenue: $336,932.

Brief description of impose and use projects: Fire Protection Clothing, Security Screening Building, Land Acquisition for Approach Protection Special Assessment, Airfield Pavement Vacuum Sweeper, Land Acquisition for Approach Protection, Taxiway Construction, Ramp Fire Protection, and Airfield Perimeter Fence.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under ''FOR FURTHER INFORMATION CONTACT'' and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sonoma County Airport.

Issued in Hawthorne, California, on March 24, 1997.

Robert C. Bloom,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–8617 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration (RSPA)

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Each Committee meeting, as well as a joint session of the two Committees, will be held at the Department of Transportation, Room 6332–36, 400 Seventh Street, SW., Washington, DC 20590.

On May 6, 1997, at 9:30 a.m., the TPSSC will meet. Agenda items include: discussion of the National Association of Pipeline Safety Representatives—Industry Petition for changes to 49 CFR Part 192; Update on Gas Gathering Lines; Office of Pipeline Safety formation of a Liquid Distribution Company Risk Assessment Quality Team (RAQT) with the National Association of Regulatory Utility Commissioners; Liquefied Natural Gas Regulatory Updates; and Excess Flow Valve Performance Standards and Customer Notification: Final Rule.

On May 7, 1997, at 1:30 p.m., the TPSSC will be joined by members of the THLPSSC for a joint session which will include:

1. Panel on One Call Legislation
2. Report on the Damage Prevention Quality Action Team
3. Metrication
4. General Regulatory Update
5. Risk Management Demonstration Program: Framework, Standard and Performance Measures
6. Risk Management Communications Framework and Orientation Program

On May 7, 1997, from 9:30 a.m. to 12:00 noon, the joint TPSSC-THLPSSC session will include:

1. Briefing on Strategic Goals
2. OPS Rulemakings Update
3. National Pipeline Mapping Project and Development of Data Standards
4. Non-Destructive Evaluation Project
5. Offshore Update
6. Operator Qualification Negotiated Rulemaking

At 1:30 p.m., the THLPSSC will meet. Agenda items include: Unusually Sensitive Areas; Breakout Tanks and Tank Standards; Lines Operating below 20% of SMYS; Update on Oil Pollution Act of 1990; Leak Detection and Emergency Flow Restriction Devices; and Risk-Based Alternative to Pressure Testing of Hazardous Liquid Pipelines.

Each meeting will be open to the public. Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Peggy Thompson, Room 2335, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4595, not later than April 30, 1997, on the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral

statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC on April 1, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–8699 Filed 4–3–97; 8:45 am]

BILLING CODE 4910–60–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–3 (Sub–No. 140X) and STB Docket No. AB–486 (Sub-No. 1X)]

Missouri Pacific Railroad Company—Abandonment Exemption—in Cloud and Jewell Counties, KS and Kyle Railroad Company—Discontinuance Exemption—in Cloud and Jewell Counties, KS

AGENCY: Surface Transportation Board.

ACTION: Notice of exemptions.

SUMMARY: The Board under 49 U.S.C. 10502 exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Missouri Pacific Railroad Company, and the discontinuance of service by Kyle Railroad Company, of the 33.4-mile Burr Oak Branch line located between milepost 496.3 at Jamestown and milepost 529.7 (end of line) at Burr Oak, in Cloud and Jewell Counties, KS, subject to labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 4, 1997. Formal expressions of intent to file an OFA [1] under 49 CFR 1152.27(c)(2) and requests for interim trail use/rail banking under 49 CFR 1152.29 must be filed by April 14, 1997; petitions to stay must be filed by April 21, 1997; requests for a public use condition under 49 CFR 1152.28 must be filed by April 24, 1997; and petitions to reopen must be filed by April 29, 1997.

ADDRESSES: Send pleadings referring to STB Docket Nos. AB–3 (Sub-No. 140X) and AB–486 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge Street (#830), Omaha, NE 68179–0001 and Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. (TDD for the hearing impaired: (202) 565–1695.)

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., 1925 K Street, NW., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Decided: April 1, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–8776 Filed 4–3–97; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

AGENCY: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes remarks by Charles Rinkevich, Director of the Federal Law Enforcement Training Center (FLETC); Elizabeth Bresee and Laurie Robinson, Committee Co-chairs; and presentations regarding the Small Town and Rural Training Series (STAR); Export Training Sites System; Fellowship Program; RCMP Faculty Exchange Program, and Leadership Program.

DATES: April 10, 1997.

ADDRESSES: Federal Law Enforcement Training Center, Glynco, Georgia.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center for State, Local, and International Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524, 1–800–743–5382.

Dated: March 27, 1997.

Steve Kernes,

Acting Director, National Center for State, Local, and International Law Enforcement Training.

[FR Doc. 97–8628 Filed 4–3–97; 8:45 am]

BILLING CODE 4810–32–M

Office of the Comptroller of the Currency

[Docket No. 97–07]

Operating Subsidiary Notice

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

ACTION: Notice and request for comment on an operating subsidiary.

SUMMARY: The Office of the Comptroller of the Currency (OCC) requests comment concerning an application filed by NationsBank, National Association, Charlotte, North Carolina, to engage in limited real estate development activities in connection with bank premises through an operating subsidiary of the bank.

DATES: Comments should be submitted on or before May 5, 1997.

ADDRESSES: Written comments regarding the application should be sent to the Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Third Floor, Washington, DC 20219, Attn: Docket No. 97–07. In addition, comments may be sent by facsimile transmission to fax number (202) 874–5274 or by internet mail to REGS.COMMENTS@OCC.TREAS.GOV. A copy of the application will be available for inspection and copying at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC 20219, through the OCC's Information Line at (202) 479–0141, or through the OCC's web site at HTTP://WWW.OCC.TREAS.GOV. Appointments for inspection of comments or the application can be made by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: William B. Glidden, Assistant Director, Bank Activities and Structure Division, (202) 874–5300, or Robert Sihler, Senior Bank Structure Analyst, Bank Organization and Structure, (202) 874–5060.

SUPPLEMENTARY INFORMATION: A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, as determined by the OCC pursuant to 12 U.S.C. 24 (Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority. Section 5.34(d) of 12 CFR part 5 authorizes the OCC to permit a national bank to conduct an activity through its operating subsidiary that is different from that permissible for the parent national bank, subject to the additional requirements specified in 12

CFR 5.34(f). For activities not previously approved by the OCC, the OCC provides public notice and opportunity for comment on the application by publishing notice of the application in the **Federal Register**.

NationsBank, National Association, Charlotte, North Carolina, has applied to the OCC pursuant to 12 CFR 5.34(f) to establish an operating subsidiary. NationsBank's application generally describes the activities in which the operating subsidiary will engage as follows:

The subsidiary will engage in the development of real estate in locations that the bank already occupies through the maintenance of bank premises, in order to gain increased flexibility in enhancing its premises locations by making them economically more vibrant. The subsidiary will be subject to the safeguards specified in 12 CFR 5.34(f). The bank further states that such flexibility will better enable it to contribute to the communities in which it operates as well as to make a safer, more pleasant work environment for employees and customers. The bank is currently considering sponsoring the development of a building to be located in Charlotte which would house approximately 45 residential condominium units. Most of the land on which the apartment building will be constructed has been owned for over 25 years by the bank and was the site of a bank branch. NationsBank is now in the process of constructing an office building on the site to be used as bank premises. The value of the office building and land is estimated to be $56 million, and the cost of constructing the residential building is estimated to be $13 million. Thus, the bank states that the residential building will be ancillary to its office building, and that both buildings will form an integrated mixed-use development with shared parking. Future projects are expected to be limited in number and in all cases will be confined to areas adjacent to or near bank premises. These projects may include the construction of an office building, retail space or a residential building. In order to ensure that the subsidiary's activities remain consistent with the parameters described above, NationsBank states that it will submit a detailed description of each future project to the OCC for prior approval.

The OCC reviews operating subsidiary applications to determine whether the proposed activities are legally permissible for an operating subsidiary and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. In publishing notice of the application, the OCC does not take a position on issues raised by the proposal. Notice is published solely to seek the views of interested persons on the issues presented and does not represent a determination by the OCC that the proposal meets, or is likely to meet, the criteria outlined above. Interested parties are invited to comment on any aspect of the application.

Dated: March 31, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–8572 Filed 4–3–97; 8:45 am]

BILLING CODE 4810–33–P

[Docket No. 97–06]

Operating Subsidiary Notice

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

ACTION: Notice and request for comment on an operating subsidiary.

SUMMARY: The Office of the Comptroller of the Currency (OCC) requests comment concerning an application filed by NationsBank, National Association, Charlotte, North Carolina, to engage in real estate lease financing through an operating subsidiary of the bank.

DATES: Comments should be submitted on or before May 5, 1997.

ADDRESSES: Written comments regarding the application should be sent to the Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW., Third Floor, Washington, DC 20219, Attn: Docket No. 97–06. In addition, comments may be sent by facsimile transmission to fax number (202) 874–5274 or by internet mail to REGS.COMMENTS@OCC.TREAS.GOV. A copy of the application will be available for inspection and copying at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC 20219, through the OCC's Information Line at (202) 479–0141, or through the OCC's web site at HTTP://WWW.OCC.TREAS.GOV. Appointments for inspection of comments or the application can be made by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: William B. Glidden, Assistant Director, Bank Activities and Structure Division, (202) 874–5300, or Robert Sihler, Senior Bank Structure Analyst, Bank Organization and Structure, (202) 874–5060.

SUPPLEMENTARY INFORMATION: A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, as determined by the OCC pursuant to 12 U.S.C. 24(Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority. Section 5.34(d) of 12 CFR part 5 authorizes the OCC to permit a national bank to conduct an activity through its operating subsidiary that is different from that permissible for the parent national bank, subject to the additional requirements specified in 12 CFR 5.34(f). For activities not previously approved by the OCC, the OCC provides public notice and opportunity for comment on the application by publishing notice of the application in the **Federal Register**.

NationsBank, National Association, Charlotte, North Carolina, has applied to the OCC pursuant to 12 CFR 5.34(f) to establish an operating subsidiary. NationsBank's application generally describes the activities in which the operating subsidiary will engage as follows:

The subsidiary will engage in real estate lease financing transactions on a nationwide basis, subject to the safeguards specified in 12 CFR 5.34(f) and certain limitations designed to minimize the risk to the subsidiary and the bank. In particular, the transactions will be on a ''nonoperating'' basis and for an initial term of at least 90 days. The leases will be ''full payout'' leases designed to yield a return that will compensate the subsidiary for not less than its full investment in the real property plus the estimated total cost of financing the property over the term of the lease from rental payments, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term. For purposes of determining whether a given lease is a full payout lease, the estimated residual value of the property will not exceed 25 percent of the acquisition cost of the property to the subsidiary. The subsidiary will acquire real property only in connection with a proposed leasing transaction. Thus, it will not acquire real property in anticipation of leasing the property at a later date. If upon termination or expiration of the lease the lessee does not acquire the real property, the subsidiary either will enter into a new lease agreement with the lessee or with a third party or will reclassify the property as OREO and dispose of the property in accordance with OCC OREO

guidelines. NationsBank states that in its opinion when the real estate lease financing transactions are conducted as described they will be the functional equivalent of mortgage loans made by the subsidiary.

The OCC reviews operating subsidiary applications to determine whether the proposed activities are legally permissible for an operating subsidiary and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. In publishing notice of the application, the OCC does not take a position on issues raised by the proposal. Notice is published solely to seek the views of interested persons on the issues presented and does not represent a determination by the OCC that the proposal meets, or is likely to meet, the criteria outlined above. Interested parties are invited to comment on any aspect of the application.

Dated: March 31, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–8573 Filed 4–3–97; 8:45 am]

BILLING CODE 4810–33–P

Internal Revenue Service

Proposed Collection; Comment Request for Form W–2G

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 W–2G, Certain Gambling Winnings.

DATES: Written comments should be received on or before June 3, 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: Certain Gambling Winnings.

OMB Number: 1545–0238.

Form Number: W–2G.

Abstract: Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax 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: Businesses or other for-profit organizations, state or local governments, and non-profit institutions.

Estimated Number of Respondents: 6,400.

Estimated Time Per Respondent: 8 hr. 49 min.

Estimated Total Annual Burden Hours: 564,200.

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: March 27, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–8693 Filed 4–3–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 1040EZ

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 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents.

DATES: Written comments should be received on or before June 3, 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: Income Tax Return for Single and Joint Filers With No Dependents.

OMB Number: 1545–0675.

Form Number: 1040EZ.

Abstract: This form is used by certain individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.

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: 15,705,603.

Estimated Time Per Respondent: 2 hr. 4 min.

Estimated Total Annual Burden Hours: 32,452,166.

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: March 27, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–8694 Filed 4–3–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 9003

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 9003, Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.

DATES: Written comments should be received on or before June 3, 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: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.

OMB Number: 1545–1065.

Form Number: Form 9003.

Abstract: Internal Revenue Code section 6039E requires that applicants for permanent residence in the United States must give information regarding their last three years tax history with their applications or face a possible $500 penalty. Form 9003 is used for this purpose.

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: 933,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 77,750.

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: April 1, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–8695 Filed 4–3–97; 8:45 am]

BILLING CODE 4830–01–U

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1996

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1996 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the production of fuel from nonconventional sources under section 29.

DATES: The 1996 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1996.

Inflation Factor: The inflation adjustment factor for calendar year 1996 is 1.9837.

Credit: The nonconventional source fuel credit for calendar year 1996 is $5.95 per barrel-of-oil equivalent of qualified fuels.

Price: The reference price for calendar year 1996 is $18.46. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuel sold in calendar year 1996.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—Thomas Thompson, CP:R:R:AR:E, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For the reference price—David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 622–3110 (not a toll-free number).

Daniel J. Wiles,

Acting Associate Chief Counsel (Domestic).

[FR Doc. 97–8696 Filed 4–3–97; 8:45 am]

BILLING CODE 4830–01–U

Joint Board for the Enrollment of Actuaries; Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of William M. Mercer, Incorporated, 30th Floor, Conference Room 30C, 1166 Avenue of the Americas, New York, New York, on Monday, April 7, 1997, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, Section 1242 (a)(1)(B).

We have determined as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), that the subject of the meeting falls with the exception to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 27, 1997.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 97–8697 Filed 4–3–97; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–6; OTS Nos. H–2838 and 2999]

Rocky Ford Federal Savings and Loan Association, Rocky Ford, Colorado; Approval of Conversion Application

Notice is hereby given that on March 27, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Rocky Ford Federal Savings and Loan Association, Rocky Ford, Colorado, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: April 1, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–8629 Filed 4–3–97; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 62, No. 65
Friday, April 4, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 96–046–1]

Importation of Fruits and Vegetables

Correction

In proposed rule document 97–7455, beginning on page 14037, in the issue of Tuesday, March 25, 1997, make the following correction:

On page 14039, in the first column, in *Garlic From Romania*, in the first paragraph, in the third garlic treatment, in the first line, ''40 g/m^3 (2 lbs/1000 ft^3)'' should read ''40 g/m^3 (2 1/2 lbs/1000 ft^3)''.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–36]

Yu–To Hsu, M.D., Denial of Application

Correction

In notice document 97–6793, beginning on page 12840 in the issue of Tuesday, March 18, 1997, make the following corrections:

1. On page 12840, in the third column, in the second full paragraph, in the first line, 'According''' should read ''Accordingly''.
2. On page 12841, in the first column, in the second full paragraph, in the tenth line, ''38'' should read ''28''.
3. On page 12841, in the second column, in the second full paragraph, in the tenth line, ''fiend'' should read ''friend''

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–36]

Donald P. Tecca, M.D. Continuation of Registration With Restrictions

Correction

In notice document 97–6795, beginning on page 12842 in the issue of Tuesday, March 18, 1997, make the following correction:

On page 12846, in the second column, in the 13th line from the bottom, ''47,063'' should read ''46,063''.

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AH07

Cost-of-Living Allowances (Nonforeign Areas)

Correction

In rule document 97–7380, beginning on page 14188, in the issue of Tuesday, March 25, 1997, make the following correction:

On page 14188, in the second column, in the *Implementation of rate changes* paragraph, in the fifth line, ''[Insert date of publication in the **Federal Register**]'' should read ''March 25, 1997''.

BILLING CODE 1505-01-D

Federal Register

Friday
April 4, 1997

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 61, 141, and 143

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 141, and 143

[Docket No. 25910; Amendment Nos. 1–47, 61–102, 141–8, 143–6]

RIN 2120–AE71

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule revises the Federal Aviation Regulations (FAR) that prescribe the certification, training, and experience requirements for pilots, flight instructors, and ground instructors, and the certification requirements for pilot schools approved by the Federal Aviation Administration (FAA). This rule updates these requirements to enhance the ability of pilots to meet the evolving demands of the National Airspace System (NAS) and operate safely and effectively in this environment.

DATES: This rule is effective August 4, 1997. Comments must be submitted on or before June 3, 1997.

ADDRESSES: Comments on the proposals may be delivered or mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 25910, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked ''Docket No. 25910.'' Comments may be examined in the Rules Docket, Room 915G, weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule contains amendments that were not proposed in Notice of Proposed Rulemaking (NPRM) No. 95–11 which was published in the **Federal Register** on August 11, 1995 (60 FR 41160). The amendments extend the applicability of the ''Age 60 Rule'' (14 CFR 121.383(c) for operational requirements, and § 61.77 for certification requirements) to 10–30 seat aircraft, for holders of U.S. pilot certificates and holders of special purpose pilot authorizations. In addition, these amendments extend the compliance date for these pilots to meet these provisions. These amendments are discussed fully in the preamble of 14 CFR 61.3 and 61.77. Because these issues were set forth in previous rulemaking actions and interested persons commented on these issues, these amendments are being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire regarding the FAA expanding the applicability of the ''Age 60 Rule'' in 14 CFR part 61 to include 10–30 seat aircraft. Comments may be delivered or mailed, in triplicate, to the FAA, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 25910, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments submitted to this rule must be marked: Docket No. 25910. Comments also may be sent electronically to the following Internet address: 9-nprm-cmts@faa.dot.gov. Comments may be examined in Room 915G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date. This amendment may be changed in light of the comments received on this final rule.

Commenters who want the FAA to acknowledge receipt of comments submitted on this rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 25910.'' The postcard will be date-stamped by the FAA and will be returned to the commenter.

Good Cause for Immediate Adoption

The FAA finds that notice and public comment on the above amendments are unnecessary. As stated in the preamble to Notice No. 95–11, the changes to the age 60 requirements in part 61 were intended to be similar to the age 60 requirement in 14 CFR part 121. Since the covered operations in part 121 have been changed, the operations in part 61 that are subject to an age limitation have been similarly changed. These are, in essence, technical amendments. The FAA does not believe that these amendments will cause undue hardship.

For these reasons, notice and public comment procedures are impracticable, unnecessary, and contrary to the public interest. As a result, the FAA, for good cause, finds that ''notice and public procedures thereon'' are unnecessary within the meaning of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act. Individuals will have an opportunity to submit comments concerning these amendments by June 3, 1997.

Availability of Final Rule

Any person may obtain a copy of this rule by submitting a request to the FAA, Office of Rulemaking, Attention: ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Requests should be identified by the amendment number or docket number.

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov, or the **Federal Register's** web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Outline of Final Rule

I. General Aviation Policy Statement

On September 8, 1993, the FAA Administrator issued a general aviation policy statement in which he recognized that the general aviation industry is a critically important part of the nation's economy and the national transportation system. The Administrator stated the following:

> General aviation plays a crucial role in flight training for all segments of aviation and provides unique personal and recreational opportunities. It makes vital contributions to activities ranging from business aviation, to agricultural operations, to warbird preservation, to glider and balloon flights. Accordingly, it is the policy of the FAA to foster and promote general aviation while continuing to improve its safety record. These goals are neither contradictory nor separable. They are best achieved by cooperating with the aviation community to define mutual concerns and joint efforts to accomplish objectives. We will strive to achieve the goals through voluntary compliance and methods designed to reduce the regulatory burden on general aviation.

The FAA's general aviation programs will focus on:

1. Safety—To protect recent gains and aim for a new threshold.
2. FAA Services—To provide the general aviation community with responsive, customer-driven certification, air traffic, and other services.
3. Product Innovation and Competitiveness—To ensure the technological advancement of general aviation.
4. System Access and Capacity—To maximize general aviation's ability to operate in the NAS.
5. Affordability—To promote economic and efficient general aviation operations, expand participation, and stimulate industry growth.

Accordingly, this rulemaking project is designed to meet these general aviation goals and to provide economic relief from unnecessary, burdensome regulations. Throughout this process, the FAA has been in a partnership with the general aviation community in developing and revising the rules in 14 CFR parts 61, 141, and 143 to ensure aviation safety, and yet delete unnecessary, burdensome rules. The FAA is committed to developing rules that are fair and reasonable, and yet promote a high level of pilot training and qualification.

II. Background

This rule is based on the proposals contained in Notice of Proposed Rulemaking (NPRM) No. 95–11, ''Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules,'' which was published in the **Federal Register** (60 FR 41160) on August 11, 1995.

Since September of 1987, the FAA has been conducting a regulatory review of parts 61, 141, and 143. These regulations pertain to certification and training requirements for pilots, flight instructors, and ground instructors, and the certification and operation of pilot schools that are approved by the FAA. This regulatory review was initiated in response to advancements in aviation technology, training, and changes in the NAS that have occurred since the last major revisions to these regulations in the early 1970's. The FAA has received numerous petitions for exemption and letters from the public suggesting changes to the current regulations. At the time the NPRM was issued, there had been 41 amendments and approximately 3,616 exemption actions to parts 61 and 141. Recommendations and comments from the National Transportation Safety Board (NTSB), the public, and the FAA also have demonstrated the need for the regulatory review. A major goal of the review has been to identify differences between the rules and the level of training demanded of pilots in today's aviation environment.

In support of this regulatory review, the FAA completed an historical review of parts 61, 141, and 143 in January 1988. During this review, the FAA received comments from pilot schools and college and university aviation departments operating under parts 61 and 141. Three major areas were identified during the review: issues of immediate concern recommended by the NTSB and public comments; the requirements for aircraft operations in today's environment; and the requirements for pilots in the year 2010 and beyond. Accordingly, the regulatory review was divided into three phases corresponding to these needs. The final rule, based on Phase 1 of this review (56 FR 11308; March 15, 1991), contained the following:

1. A requirement to obtain training and a flight instructor endorsement to serve as pilot in command of a tailwheel airplane;
2. A requirement to obtain training and a flight instructor endorsement to serve as pilot in command of a pressurized airplane capable of high altitude flight above 25,000 mean sea level (MSL);
3. A requirement for an applicant to complete a training curricula and receive a flight instructor endorsement prior to qualifying in an airplane that requires a type rating;
4. A provision to permit pilots to complete a phase of an FAA-sponsored pilot proficiency program (WINGS program) in lieu of a biennial flight review (BFR);
5. A requirement for pilot applicants to receive ground training on stall awareness, spin entry, spins, and spin recovery techniques;
6. A requirement for pilot applicants to receive flight training on flight at slow airspeeds with realistic distractions and the recognition of, and recovery from, stalls;
7. A requirement for flight instructor applicants to receive actual spin training;
8. A requirement for flight instructor applicants to perform a spin demonstration on retests when the reason for the previous failure was due to deficiencies of knowledge or skill relating to stall awareness, spin entry, spins, or spin recovery techniques;
9. A provision that FAA inspectors and designated pilot examiners may accept an instructor endorsement in lieu of a spin demonstration on a practical test for the flight instructor certificate;
10. A requirement in part 141 that a chief or assistant chief flight instructor be available by telephone, radio, or other electronic means only during the time that instruction is given for an approved course of training;
11. A provision in part 141 to permit the initial designation of assistant chief flight instructors who possess half the experience requirements of chief flight instructors;
12. A provision to eliminate the 100-hour currency requirements in part 141 for obtaining initial designation as a chief flight instructor; and
13. A provision to eliminate the 25-mile distance restriction for establishing satellite bases in part 141.

This final rule reflects the results of Phase 2 of the regulatory review. Phase 2 addressed issues affecting parts 1, 61, 141, and 143. Prior to publishing this rule, the FAA issued a notice of meeting (54 FR 22732; May 25, 1989) that announced four public meetings and outlined the general topics to be considered for this final rule. The four public meetings were held before the drafting of this rule and were held in Washington, DC (September 12–13, 1989); Chicago, Illinois (September 19–20, 1989); Los Angeles, California (October 3–4, 1989); and Orlando, Florida (October 16–17, 1989).

Phase 2 also involved a Pilot and Flight Instructor Job Task Analysis (JTA), completed on March 31, 1989, which consolidated the results of a study on areas of pilot knowledge, skills, abilities, and attitudes required in today's aviation environment. The JTA provided the framework for this phase of the regulatory review and information for use in training programs and practical test standards. Most of the JTA consisted of data, based on experts' opinions, used to quantify the relative importance of knowledge, skills, abilities, and attitudes. The JTA also included a panel that discussed current and future pilot training needs and whose objective was to project pilot training needs 3 to 10 years into the future. The panel discussed changing technology, airline pilot requirements, airspace, training, instructors, and aviation economics. A copy of the JTA is available for examination in Docket No. 25627.

On February 9 and 10, 1993, the FAA conducted information-gathering meetings with a number of aviation organizations and schools on the comments received in Docket No. 25627. These meetings concerned issues raised during the earlier public meetings and the information received during the JTA. The invitees were selected as a result of their organizations' and schools' past involvement in this regulatory review. The following organizations and schools attended these meetings: General Aviation and Manufacturing Association (GAMA), National Air Transport Association (NATA), Jeppesen-Sanderson, National Association of Flight Instructors (NAFI), Balloon Federation of America (BFA), Farrington Aircraft, Aircraft Owners and Pilots Association (AOPA), AOPA Safety Foundation, Experimental Aircraft Association (EAA), Helicopter Association International (HAI), Soaring Society of America (SSA), Embry Riddle Aeronautical University (ERAU), Parks College of St. Louis, and American Flyers. This rule incorporates many of the concepts developed through the public meetings, the JTA, and the public comments received in Docket Nos. 25627 and 25910. Additional amendments to ensure that Title 14, Code of Federal Regulations, conforms with the provisions of this final rule will be the subject of a rulemaking action in the immediate future.

Experimental Aircraft Association (EAA) Petition

On January 3, 1994, the FAA published, without comment or endorsement, a petition for rulemaking submitted by EAA (59 FR 31). In their petition, the EAA requested the following:

1. Eliminating the requirement that a recreational pilot hold at least a third-class medical certificate;

2. Requiring a recreational pilot to self-certify that he or she has no known medical deficiency that would make him or her unable to fly;

3. Eliminating the 50-nautical mile limitation for those recreational pilots who obtain additional training;

4. Permitting a pilot with a higher certificate or rating who no longer has a medical certificate, but who self-certifies that he or she is physically fit to fly, to exercise the privileges of a recreational pilot certificate, subject to the limitations of the recreational pilot certificate; and

5. Eliminating the recreational pilot certificate limitations for cross-country, night flight, and flight into airspace requiring communication with air traffic control for those pilots with higher certificates and ratings who no longer have medical certificates, but who self-evaluate that they are physically fit to fly.

The comment period for the EAA petition closed on March 4, 1994. Over 1,000 comments were received, and the majority of commenters voiced overwhelming support for the petition. Some commenters, including the Civil Aviation Medical Association (CAMA), opposed the EAA petition. CAMA expressed concern with the impact on public health and welfare of the elimination of medical standards for pilots who exercise the privileges of a recreational pilot certificate. One specific concern of those commenters who opposed the EAA petition was the carrying of passengers by a pilot who does not hold a medical certificate. The FAA has reviewed all comments received in response to EAA's petition in developing this rulemaking action. The vast majority of commenters responding to this petition were individual members of the aviation community and many were members of the EAA.

In this final rule, the FAA is adopting one very significant change requested by the EAA: elimination of the 50-nautical-mile limitation for those recreational pilots who obtain additional training. For reasons discussed in section IV,A of this preamble, the FAA has decided not to adopt those other elements of the EAA proposal that were proposed in Notice No. 95–11.

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers; Final Rule

On July 2, 1996, the FAA issued Amendment Nos. 1–45, 61–100, 91–251, 121–259, 125–27, 135–63, 141–7, 142, and SFAR 58–2, ''Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers; Final Rule'' (61 FR 34508–34568), subsequently referred to as Amendment No. 61–100. Those provisions of Amendment No. 61–100 that revised part 61 and Amendment No. 141–7 that revised part 141 have been included in this rule. In addition, some of the provisions of Amendment Nos. 61–100 and 141–7 have been modified to conform with changes adopted in this final rule and to correct several mistakes and omissions that were contained in Amendment Nos. 61–100 and 141–7.

Amendment No. 61–100 redesignated §§ 61.2, 61.3, and 61.5 as §§ 61.3, 61.5, and 61.6, respectively. In addition, that amendment added a new section, § 61.2, Definition of terms. In this final rule, § 61.1 includes both the applicability provisions and the definitions of terms currently found in § 61.1 and § 61.2. Accordingly, §§ 61.2, 61.3, 61.5, and the preamble discussion of those sections in this final rule reflect the structure of part 61 prior to the adoption of Amendment No. 61–100 and the organization of part 61 proposed in Notice No. 95–11.

III. The Proposed Rule and General Description of Comments

In Notice No. 95–11, the FAA proposed a major revision to the training and certification requirements applicable to pilots, flight instructors, ground instructors, and those pilot schools approved by the FAA. The intent of the proposal was to make the regulations more compatible with the current operating environment and the evolving demands of the NAS. The proposals included measures to update training, certification, and recency of experience requirements, and a number of the proposals were intended to promote and encourage increased pilot training activities.

The major proposals in the NPRM included: (1) Clarification and standardization of terminology; (2) establishment of a new powered-lift category for pilot certification; (3) separation of class ratings for nonpowered and powered gliders; (4) a new flight instructor certificate in the lighter-than-air category; (5) creation of separate instrument ratings for single-engine and multiengine airplanes, airships, and powered-lifts; (6) revisions

to the recency of experience requirements, particularly related to recent takeoffs and landings, and instrument currency; (7) revisions to the recreational pilot certification and authorization requirements, including the elimination of the 50-mile limit on flights; (8) human factors training requirements for all certificates and ratings; (9) replacement of flight proficiency requirements for training and certification with more general approved areas of operation; (10) revision of the minimum training times for the aeronautical experience requirements to permit training to a standard; (11) placement of ground instructor requirements in part 61 rather than in part 143; (12) requirement for ground instructor certificates to be based on aircraft category; (13) establishment of a practical test for ground instructor applicants; (14) revision of the certification and test courses in part 141 to accommodate all aircraft categories and new technology; (15) establishment of a check instructor position for student and instructor checks and tests at pilot schools operated under part 141; (16) deletion of exceptions that permit pilots to be certificated without meeting English language fluency requirements; (17) revision of medical certificate requirements to permit applicants for all certificates and ratings to hold a third-class medical certificate rather than the medical certificate required to exercise the privileges of the certificate; and (18) elimination of the requirement for recreational pilots to hold any medical certificate.

In response to Notice No. 95–11, the FAA has received over 5,400 comments from the public. The majority of those responding were pilots. Commenters also included associations representing air carriers, general aviation, and universities, including the following organizations: Aerospace Medical Association (AsMA), Aero Sports Connection (ASC), Air Line Pilots Association (ALPA), Air Transport Association of America (ATA), Aircraft Owners and Pilots Association (AOPA), American Diabetes Association (ADA), Auxiliary-powered Sailplane Association (ASA), Balloon Federation of America (BFA), Civil Air Patrol (CAP), Civil Aviation Medical Association (CAMA), Deaf Counseling Advocacy and Referral Agency (DCARA), Department of Veterans/ Veterans Benefits Administration (VA), Experimental Aircraft Association (EAA), General Aviation Manufacturers Association (GAMA), Helicopter Association International (HAI), International Deaf Pilots Association (IDPA), National Air Transportation Association (NATA), National Association of Flight Instructors (NAFI), National Business Aircraft Association, Inc. (NBAA), National Fraternal Society of the Deaf (NFSD), Paralyzed Veterans of America (PV), Seaplane Pilots Association (SPA), the Soaring Society of America (SSA), and United States Ultralight Association, Inc. (USUA). Comments also were received from public officials, including the Governor of Nebraska and the Mayor of Omaha.

Most respondents address specific issues rather than the NPRM overall. However, of the approximately 5,400 comments on the NPRM, about 130 express general support for the proposed rulemaking, and more than 220 express general opposition to the NPRM. Many of the commenters, particularly those who support the proposals to eliminate the medical certification requirement for recreational pilots as well as elimination of the 50-mile flight limitation on recreational pilots, urge immediate completion of the recreational pilot provisions of the rulemaking. Others state that the proposal would promote the growth of aviation.

However, some commenters who express general opposition to Notice No. 95–11 state that it is too voluminous and complex. One commenter states that while he originally supported Notice No. 95–11 based on the proposed liberalization of requirements related to recreational pilot certification, a subsequent detailed reading of what he termed ''numerous new restrictions'' in the rest of Notice No. 95–11 changed his mind. Other comments in opposition to Notice No. 95–11 state that the proposal would create burdensome and onerous new regulations and restrict the growth or threaten the continuation of certain aviation activities. One commenter criticizes the proposal for ''granting the FAA Administrator more power.'' Some commenters state that no safety data has been presented in support of the new requirements. One of the most controversial areas, for example, was the proposal to create a flight instructor certificate for the lighter-than-air category.

About 40 commenters express mixed reaction, including proposing their own variations on some of the FAA-proposed amendments. One hundred and fourteen commenters suggest technical, grammatical, and typographical corrections, which the FAA has considered in revising the proposed rule language. Some commenters state that the structure of the rule language is difficult to follow because of the numbering system and length of some of the sections. The FAA also considered this issue in drafting the final rule. Several commenters also object to the length of the proposal, stating that it is difficult to properly digest and respond to the large volume of material.

AOPA comments that Notice No. 95–11 is extremely complex and unmanageable from a public comment perspective. From a review of the comments submitted to the docket, AOPA concludes that the general aviation community has not been made fully aware of the significant impact of the proposals, and the association does not believe that it is possible for the FAA to adequately respond to all of the public's comments without reissuing another NPRM on part 61. According to AOPA, the public's misconceptions are the result of the incomplete nature of the NPRM's preamble. AOPA states that many of the changes were not addressed in the preamble or were labeled as editorial and format changes. The association contends that some of the editorial changes will have the greatest impact on pilots. AOPA also states that attempts to codify existing policy have often created significant restrictions not currently found in the regulations and, in some instances, do not reflect current FAA policy. AOPA believes that a more efficient approach would be to address issues in smaller, more manageable sections that would afford the public a better opportunity to provide complete and meaningful comments. According to AOPA, the proposal imposes burdensome new requirements on general aviation in excess of any benefits it might provide. The association recommends that the FAA identify which changes received widespread public support and separate them for expeditious publication as a final rule.

EAA states that Notice No. 95–11 contains many additional rules that increase the complexity and cost of learning to fly and maintaining currency. EAA is particularly concerned that the proposal will burden flight instructors. The association also comments that the rules appear to be changed in an effort to make enforcement easier.

In its comment, GAMA strongly supports the FAA's efforts to review parts 61 and 141. GAMA states that many of the proposals will maintain or increase the margin of safety while benefiting students and the training industry as a whole. The association recommends that, because Notice No. 95–11 is extremely complex, the FAA expedite a final rule incorporating the less complex and controversial issues,

such as the elimination of the third-class medical certificate requirement for recreational pilots and the pilot training requirements for operating newly certificated aircraft. GAMA feels that the more complex or controversial issues should be addressed in a subsequent final rulemaking.

NBAA believes that this proposal is a comprehensive measure to modernize pilot, flight instructor, ground instructor, and pilot school certification rules. The association adds that this proposal is a valid effort to promote general aviation, improve safety, and reduce costs to aviation consumers, and provide for large improvements in aviation training.

NATA comments that, although it generally is pleased with Notice No. 95–11, it strongly supports maintaining the distinct difference between parts 61 and 141 schools. The association disagrees with the elimination of some of these differences and believes the economic viability of part 141 schools is dependent on maintaining this distinction.

SSA states that the proposed changes answer many past comments and, for the most part, benefit safety. However, SSA feels that certain sections of Notice No. 95–11 do not comply with the FAA's goal of reducing regulatory burdens, nor do they demonstrate the FAA's faith that the soaring community will voluntarily improve its safety record. According to SSA, some of the proposals will have a detrimental effect on the cost of learning to fly sailplanes, without enhancing safety.

HAI states that its comments are based on a compilation of member comments and consultations with other general aviation associations. HAI chose not to comment on part 1, in the belief that the FAA will reference changes to the affected rule and make appropriate changes to definitions in part 1.

The public comments received on specific proposals and the FAA's response to these comments are addressed in sections IV and V. Each discussion includes a summary of the issue, a summary of the public comments, the FAA response, and disposition of the issue for purposes of the final rule. All comments were reviewed and considered during FAA deliberations regarding the rule and are available for public examination in Docket No. 25910.

IV. Discussion of Major Issues

A. The Exercise of Recreational Pilot Certificate Privileges

1. Medical Requirements for Recreational Pilots and Holders of Higher Pilot Certificates Exercising the Privileges of a Recreational Pilot Certificate

Summary of proposal/issue: In Notice No. 95–11, the FAA proposed to allow the following persons to operate aircraft without a medical certificate: pilots who hold recreational pilot certificates, student pilots operating within the limitations of a recreational pilot certificate, and those higher-rated pilots (private, commercial, and airline transport pilot) who elect to exercise only recreational pilot privileges. In lieu of the requirement to hold a medical certificate, each pilot would be allowed to evaluate his or her own medical condition and determine if he or she is fit to fly. This proposed approach of relying on the judgment of an individual pilot regarding his or her fitness represented a departure from past FAA policy for powered aircraft. The FAA has required that pilots, except for glider and balloon pilots, hold medical certificates to ensure the safety of pilots, passengers, and people and property on the ground.

This proposed change to FAA policy set forth in Notice No. 95–11 was made after consideration of a petition for rulemaking from the Experimental Aircraft Association (EAA), and comments received in response to that petition. The EAA petitioned the FAA to eliminate medical requirements for pilots exercising the privileges of a recreational pilot certificate (59 FR 31; January 5, 1994).

General Comments: In Notice No. 95–11, the FAA asked a number of questions that were designed to elicit comment on whether self-evaluation should be permitted for the pilots discussed. With respect to the general concept of self-evaluation, the majority of individual commenters voice support for eliminating the medical requirement for recreational pilots and holders of a higher pilot certificate exercising the privileges of a recreational pilot certificate. Supporting this proposal are the Aircraft Owners and Pilots Association (AOPA), Experimental Aircraft Association (EAA), American Diabetes Association (ADA), Aero Sports Connection (ASC), General Aviation Manufacturers Association (GAMA), National Association of Flight Instructors (NAFI), and Soaring Society of America (SSA).

AOPA states that it supports this departure from previous FAA policy as being ''beneficial to the economic well-being of general aviation by providing a potential stimulus for new flight activity and training'' and ''that removing the requirement for the medical certificate from the regulations will not have a significant impact on general aviation safety.''

Individual commenters who favor the proposal state that medical self-evaluation would eliminate the paperwork and expense of medical examinations. Commenters argue that overall there is a small number of aviation accidents related to medical causes. Many of these commenters cite the accident experience of balloon and glider pilot operations and note that no medical certification is required for these operations.

The commenters who oppose allowing pilots to exercise the privileges of a recreational pilot without a medical certificate cite general safety concerns as the basis for their disapproval. Specifically, opposing the proposal are the Aerospace Medical Association (ASMA), Air Line Pilots Association (ALPA), Civil Aviation Medical Association (CAMA), and Helicopter Association International (HAI).

The medical associations raised various concerns. CAMA indicates that there are a number of medical problems that cannot be recognized by an individual who evaluates himself or herself and that are incompatible with safe flight. CAMA also states that ''[s]ome individuals can be expected to deny to themselves the seriousness of their medical problems.'' CAMA believes medically related accidents inevitably would follow the adoption of this proposal, but they also acknowledge that medically caused accidents are rare. CAMA also states its concern that the proposal is not in the long term interests of any pilot because ''[m]inor problems will be detected on the FAA medical examination and managed before they become major problems. For example, early hypertension will be apparent and can be treated promptly.''

ASMA argues that although all pilots exercise a degree of self-evaluation before every flight, ''the experience of practicing aviation medical examiners is that private or recreational pilots are most often the ones who proceed to fly with existing medical problems.''

HAI states its opposition to the proposal arguing that ''[t]he medical is a necessary evil in aviation'' and that ''if you want to fly, get a medical.'' Several individual commenters also disagree with the proposal. One commenter

expresses disagreement with the proposal indicating that self-evaluation would allow pilots to lie about their health and endanger their passengers and people in the areas they overfly. Another commenter states that he prefers the current third-class medical certificate requirements and does not see how the FAA will be able to enforce the proposed self-evaluation without any standard in the rule. This same commenter states that the balloon and glider accident records cited by supporters of the proposal are not indicative of the larger group of general aviation pilots.

Comments to Specific Questions

Safety Data. In Notice No. 95–11, the FAA asked a number of questions regarding medical self-evaluation. The FAA requested data on any safety or other public interest concerns that may arise from the recreational pilot self-evaluation proposal. No such data were submitted.

Need for Medical Standards. A majority of commenters (including AOPA and EAA) state that they generally oppose the FAA having specific medical standards for self-evaluation arguing that a list of disqualifying conditions would be tantamount to creation of a new kind of medical certificate. EAA states that ''specific standards are inappropriate (in fact, contradictory) for self-certification'' and that they ''are not necessary for safety and therefore would only institute additional unnecessary regulation.'' AOPA states that ''[it] is deeply opposed to any regulated restrictions on medical self-certification for recreational pilots'' arguing that ''[d]oing so, will only create what is in effect, yet another class of medical certificate, defeating any benefits that could be derived from this proposal.''

Some individual commenters who oppose listing disqualifying conditions for pilot self-evaluation state that they believe the limitations of the recreational pilot certificate restrict the pilot to less stressful types of operations that pose minimal risks to other persons and property. Numerous commenters state that self-evaluation, with no listing of conditions or constraints, has worked well for glider and balloon pilots for many years. They argue that the same self-evaluation process should be adopted for recreational pilots.

A few commenters state that only certain medical conditions should be disqualifying. ALPA and AsMA support a list of disqualifying medical conditions. Of these commenters, however, there was no consensus on what medical conditions should be disqualifying. CAMA states that further study should be done before adopting the proposal.

Failure of a Medical Exam. Most commenters state that pilots who have failed a medical examination by the FAA should not necessarily be prevented from claiming that they have no known medical deficiencies that would make operating an aircraft unsafe. In addition, a majority of commenters state that any pilot who has had a medical certificate revoked or suspended, or who has held a special issuance of a medical certificate should not automatically be prohibited from claiming that that pilot has no known medical deficiencies that would make operating an aircraft unsafe. AOPA does state, however, ''that it has some concern that the publicity surrounding the self-evaluation proposal may have built an unintended expectation in the pilot community that anyone will be able to fly under the proposed rule,'' and that AOPA ''would encourage any pilot who has been denied a medical certificate or who holds a special issuance certificate to consult a physician.''

ALPA and AsMA support prohibiting any pilot from claiming that he or she has no known medical deficiencies if that pilot has failed a medical examination by the FAA, had a medical certificate revoked or suspended, or holds or has held a special issuance of a medical certificate.

Disclosure to Passengers. Most commenters (including AOPA and EAA) state that the FAA should not require pilots to disclose to their passengers that they do not hold a medical certificate but that they have evaluated themselves as medically fit to fly.

Medical History or Records. Most commenters (including AOPA and EAA) also argue that these pilots should not be obligated to provide the FAA with their medical history or records upon request as part of a specific investigation or randomly as part of a compliance program, nor should they be required to undergo medical testing when any uncertainty exists as to whether or not they have any medical problems.

Surrender of Pilot Certificates. In addressing the issue of whether a pilot with known medical deficiencies should be required to surrender his or her pilot certificate to the FAA, nearly all of the commenters oppose the mandatory surrender of a pilot certificate, in such a case. AsMA, however, supports mandatory surrender of pilot certificates. In addition, the vast majority of the commenters (including AOPA and EAA) state that the FAA should not require a pilot who has known medical deficiencies to have his or her pilot certificate stamped with a statement that the pilot certificate is not valid unless accompanied by a current medical certificate. ALPA and AsMA support such a stamping requirement.

FAA Response: The FAA carefully considered all comments pertaining to the proposal that pilots who hold recreational pilot certificates, student pilots operating within the limitations of a recreational pilot certificate, and those higher-rated pilots who elect to exercise only recreational pilot privileges be permitted to operate an aircraft without holding a medical certificate. Although the FAA acknowledges that most of the comments favored eliminating the third-class medical certificate requirement for such pilots, few of these comments contained supporting data or analysis. Safety is the FAA's overriding regulatory concern, and before such a significant change can be adopted, the FAA must ensure that the level of safety will not be degraded.

The comments of the medical associations, AsMA and CAMA, raised serious safety concerns regarding the limitations of self-evaluation. Furthermore, in reviewing the comments, the FAA noted that there is controversy regarding alternative methods of implementing and enforcing self-evaluation in lieu of medical certification. The FAA has determined that additional scrutiny of the proposal is needed to ensure that it would raise or maintain the current level of safety; therefore, the FAA has withdrawn the proposed change from the final rule. The FAA intends to conduct additional study on this proposal and may issue a separate rulemaking action in the future.

2. Elimination of the 50-Nautical Mile Limitation for Recreational Pilots

Summary of proposal/issue: In Notice No. 95–11, the FAA proposed to permit a recreational pilot to operate an aircraft in cross-country flight more than 50 nautical miles from that pilot's base of training if the pilot receives ground and flight training and the equivalent to that required for the exercise of cross-country flight privileges by a private pilot and receives the appropriate flight instructor endorsements. This change was intended to increase the utility of the recreational certificate and to promote general aviation.

Comments: More than 2,000 comments addressed the proposal. Virtually all commenters (over 99 percent) favor the proposed change.

EAA and NAFI support eliminating the 50-mile flight limit because it will help attract and retain recreational

pilots. These commenters also believe the proposal will improve safety. AOPA also supports the proposal and states that a valuable benefit will be given to recreational pilots without compromising safety. ASC supports removing the mileage limitation with an endorsement from a CFI. Other commenters state that this limitation has been a main factor in discouraging interest among prospective pilots from earning the recreational pilot certificate, and that the proposal would revitalize sport aviation with no adverse impact on safety.

GAMA opposes lifting the 50-mile flight limit. It believes that the proposal fails to provide an adequate amount of training for the recreational pilot to competently and safely exercise the privileges of the certificate. GAMA states that safety is a critical factor, and, coupled with the reduction in solo flight time, the provision could prove dangerous. According to GAMA, there should be no increase in recreational pilot privileges, and instead the FAA should encourage advanced training. One of the few individual commenters who objects to the proposal states that the recreational pilot certificate was intended for people who want to fly airplanes ''for the fun of it,'' but if they want private pilot privileges, they should obtain the training necessary for the private pilot certificate.

FAA Response: The FAA notes the overwhelming support of the commenters for this specific proposal. GAMA's concerns that recreational pilots will lack the necessary skill due to the revised aeronautical experience requirements have been considered. However, the FAA has determined that an acceptable level of safety will be maintained because recreational pilots will receive additional training equivalent to that of a private pilot, and other recreational pilot restrictions will continue to apply. The rule change will benefit general aviation by stimulating interest in recreational flying, encouraging recreational pilots to seek additional certificates and ratings, and promoting additional pilot training. The proposal is therefore adopted in the final rule.

B. Recent Flight Experience

1. Takeoffs and Landings

Summary of proposal/issue: The FAA proposed to revise the recency of experience requirements in § 61.57. The proposed revisions in Notice No. 95–11 included requiring all landings, not just night landings, to be conducted to a full stop. The proposal also required that these landings involve flight in the traffic pattern at the recommended traffic pattern altitude for the airport.

Comments: More than 170 comments address the takeoff and landing aspect of recency of experience. Approximately 65 percent of the comments oppose the proposal.

Most of the opposition concerns the proposal to require all landings to be conducted to a full stop and to involve flight in the traffic pattern and at the recommended traffic pattern altitude for the airport.

AOPA expresses opposition to the requirement for full-stop landings. The commenter does not believe that the FAA has presented any evidence that full-stop landings are safer than touch-and-go landings. According to AOPA, the proposal will cause a significant increase in airport congestion and pollution, in training time spent on the ground, and in the overall costs of maintaining proficiency. The commenter also states that there is no safety evidence to support the requirement that the landings be performed in the traffic pattern from the recommended pattern altitude. AOPA comments that rotorcraft rarely fly a complete traffic pattern, because to do so would create a hazardous mix of dissimilar aircraft. According to the commenter, the proposal also would lead to decreased efficiency for glider operations and emergency procedures training.

NBAA comments that the requirement for full-stop landings eliminates the efficient touch-and-go maneuver without justification, while adding to airport congestion and aircraft operators' costs. NBAA also objects to the language of proposed § 61.57(a)(iii), because it can be interpreted as requiring ''a circuit in the traffic pattern.'' The commenter states that most pilots combine currency landings with other flight operations rather than full circuits in the traffic pattern, and the proposal might require dispatching aircraft and crews specifically for currency takeoffs and landings, thereby adding time and expense.

HAI expresses opposition to proposed § 61.57(a)(1)(iii) requiring that all takeoffs and landings be conducted in the traffic pattern at the recommended traffic pattern altitude. The commenter states that helicopters do not always fly to or from airports, or operate in the traffic pattern if at an airport. HAI suggests modifying the proposed rule to require each takeoff and landing to be separated by an en route phase of flight.

SSA states that, at some gliderports, the currency landings are performed on a nonactive runway to avoid conflicts with the normal traffic patterns. SSA suggests modifying § 61.57 to reflect this practice.

Generally, individual commenters express opinions similar to those of the associations. Several individual commenters state that the proposed requirements are not applicable to balloon operations, and therefore the current rule should be retained. They cite operations in an airport traffic pattern, for example, and one commenter asks what ''full stop'' means in relation to balloons.

FAA Response: After consideration of the comments, the FAA has decided to withdraw the proposed requirement that landings involve flight in the traffic pattern and at the recommended traffic pattern altitude for the airport. In addition, the FAA will not go forward with the requirement for full-stop landings because, as indicated by the commenters, there is no cost justification for the measure, and it will result in increased congestion at airports. However, the FAA is retaining the current full-stop requirements for tailwheel aircraft, as well as for night landings.

2. Recent Instrument Experience

Summary of proposal/issues: The FAA proposed to revise the instrument recency of experience requirements of § 61.57 by eliminating the requirement for 6 hours of flight in actual or simulated instrument conditions every 6 months. For aircraft other than gliders, the proposal required that a pilot, within the preceding 6 calendar months, perform and log at least six instrument approaches; holding procedures; intercepting and tracking of very high frequency omnirange (VOR) radials and nondirectional beacon (NDB) bearings; recovery from unusual flight attitudes; and flight by reference to instruments. The preamble to the NPRM stated that these maneuvers and procedures would not be required to be performed in actual or simulated instrument flight conditions.

Comments: More than 385 comments were received on this issue. The comments reflect widely disparate opinions. More than 200 comments express clear opposition to the proposal. Nearly as many comments take issue with parts of the proposal, and propose variations to it. Approximately 60 comments agree with the proposal. Some commenters indicate that they believe the proposal would make it more difficult and costly to remain current for operations under IFR. One commenter, however, says he believes the proposal will permit pilots who do not fly as frequently to stay current and

continue to have access to the IFR system.

GAMA supports the elimination of the minimum hour requirement for instrument currency. GAMA, however, believes that a minimum of 50 percent of the time spent performing maneuvers should be in actual or simulated instrument flight conditions, or in an approved flight simulator or flight training device.

In its comment, ALPA expresses concern regarding several aspects of the proposed instrument currency requirements. According to ALPA, the requirement for the use of NDBs may not be practical because NDBs are being removed from service. The commenter also believes that there should be an option to allow operations using the global positioning system (GPS). Although ALPA agrees with the need for unusual attitude training, the commenter states that there needs to be FAA guidance on practice methods and procedures. ALPA also contends that recency of experience maneuvers should be performed in either instrument or simulated instrument conditions.

NAFI opposes specifying the use of any particular equipment, such as VORs and NDBs, for instrument currency and suggests the requirement should simply be for ''navigation by reference to instruments.'' It is NAFI's position that unusual attitude training is appropriate for flight reviews, not currency requirements, and should not be performed without a safety pilot.

NATA opposes several aspects of § 61.57. The commenter contends that unusual attitude maneuvers belong in instrument training and BFR requirements, not in instrument currency requirements. NATA also believes that the requirement that VORs and NDBs be used for several tasks is too restrictive. NATA recommends that the tasks be performed ''with the available navigational technology.'' NATA, however, supports requiring six approaches rather than the 6 hours for currency.

In its comments, NBAA recommends that the number of approaches for currency purposes should be left at 6 rather than 12, as noted in the preamble to the NPRM. NBAA also contends that references to VORs and NDBs should be deleted because these navigational aids are rapidly becoming obsolete. In addition, the commenter opposes unusual attitude training.

AOPA comments that the elimination of the 6 hours of required instrument time will benefit general aviation economically. The commenter also finds the requirement for six approaches to be an acceptable minimum for proficiency. With regard to holding procedures, the association has no strong objection to the proposal but questions the need for such a requirement. AOPA states there is no current safety problem in this area and, except for airline pilots, holding procedures are rarely encountered. Also, according to AOPA, it is not appropriate to specify the types of navigational aids that should be used for instrument currency because of the transition to newer technologies such as GPS. AOPA also points out that many aircraft are not equipped with an ADF receiver. The commenter objects to the requirement for unusual attitudes currency for the same reasons expressed by NAFI. Like ALPA and GAMA, AOPA believes that the instrument currency procedures should be performed in either actual or simulated conditions. The commenter states that if the FAA does not intend to require flight in actual or simulated conditions, § 61.57(c)(2) should be clarified to prevent varying interpretations of the rule. AOPA also strongly supports the use of simulators and flight training devices, including some PC-based simulators, for currency and proficiency.

Like many of the other commenters, HAI objects to the requirement for recovery from unusual attitudes. The commenter also states that commercial or corporate pilots will not be able to maintain currency in the normal course of flight because of the proposals. HAI supports eliminating the 6 hours of instrument time for currency, but proposes deleting holding procedures and unusual altitude currency, and changing the requirement to track VORs radials and NDB bearings to ''intercepting and tracking electronic navigation aids.''

Comments from individual commenters, for the most part, agree with the positions advanced by the associations.

FAA Response: After consideration of the comments, the FAA has decided to withdraw the requirement for recovery from unusual attitudes. The FAA agrees with commenters who point out that practicing these maneuvers would require a safety pilot and increase the cost of maintaining instrument proficiency with only questionable safety benefits.

In addition, the FAA has determined that the requirement for intercepting and tracking VOR radials and NDB bearings should be modified. The final rule requires pilots to intercept and track ''courses through the use of navigation systems.'' As noted by the commenters, advances in air navigation technology support deleting the reference to specific navigation systems. The FAA maintains that requiring completion of specific training tasks, such as intercepting and tracking courses and holding procedures, provides a safety benefit by improving operational currency and the proficiency of pilots. For this reason, the final rule includes the requirement for holding procedures. The proposed requirement for six approaches also is incorporated into the final rule.

The FAA has decided to retain the current requirement that the tasks to meet recent instrument experience requirements be performed and logged under actual or simulated instrument conditions. This requirement can be met in an aircraft of the appropriate category, in an approved flight simulator, or a flight training device that is representative of the aircraft category.

As proposed in the NPRM, the final rule will not include a minimum hour requirement to meet instrument currency. The elimination of this requirement will provide pilots economic relief by permitting currency requirements to be completed in less time.

Other proposed changes to § 61.57 are discussed in the section-by-section analysis of § 61.57.

C. Lighter-Than-Air Flight Instructor Certificate

Summary of proposal/issue: The FAA proposed to amend § 61.5 to establish new flight instructor ratings for lighter-than-air category aircraft. Section 61.3 included a provision to permit holders of a commercial certificate with an airship or free balloon class rating to conduct training in the appropriate aircraft for 2 years after issuance of the final rule; the 2-year conversion process was contained in proposed § 61.201. Proposed § 61.187 required that a person who trains an applicant for a lighter-than-air flight instructor certificate meet requirements comparable to flight instructor applicants training in other aircraft categories. The proposal was partly a result of input received from balloon operators and organizations in public meetings held during the regulatory review in 1989, and from public comments filed in the docket during this regulatory review and prior to the issuance of Notice No. 95–11.

Comments: More than 880 comments were submitted on this issue, the majority regarding the proposed requirement's effect on balloon flight training rather than airship flight training. Many of those commenters oppose the proposal. (One commenter includes a petition opposing the

proposal and signed by over 400 persons.) Commenters identify themselves as individual pilots and representatives of businesses involved in ballooning, including manufacturers and providers of balloon flights and training.

In general, many of these commenters contend that the current system of commercial balloon pilots providing flight instruction works well, and that because of the small numbers of balloons, pilots, and days with acceptable weather for balloon flight, ballooning should be treated differently than other aircraft categories. Some commenters ask what specific quality-of-instruction issues the FAA meant to address with the proposal. The commenters contend that ballooning has an outstanding safety record, and that creation of the new flight instructor certificate would make training harder to obtain, for both initial pilot certification and for flight reviews.

The BFA strongly opposes the proposal, stating that the proposal would ''lead to severe economic, safety, and time burdens to all balloon pilots, to the point where it will cause a significant decline in our sport.'' The BFA's comment states that there is no current safety problem to justify the proposal, and that consistent use of the Practical Test Standards by designated examiners has ensured that balloon instructors obtain necessary skills. The BFA states that the safest learning scenario is for student pilots to train in the area where they will do most of their flying, so that they can learn local weather and terrain conditions. This will not be feasible if prospective pilots, except those who live in the few major urban centers where there is a large amount of balloon activity, are forced to obtain training from nonlocal training facilities. The BFA also states that students in such circumstances probably would lose the benefit of more frequent training sessions.

SSA and NAFI also oppose the proposal. SSA comments that there has been no demonstrated safety degradation under the current system, and NAFI states that the FAA has failed to provide supporting evidence of a need for the change. SSA points out that the BFA provides training material and self-polices in a manner similar to the United States Hang Gliding Association (USHGA).

AOPA objects to proposed § 61.7, which addresses obsolete certificates and ratings, because it would effectively invalidate all balloon certificates issued before 1973. AOPA maintains that all certificated airmen should be able to retain the privileges they currently hold.

Individual commenters contend that few commercial balloon pilots will seek the instructor certificate, partly because few areas of the country have enough students to justify the expense of obtaining and keeping the certificate current. They state that one of the methods of flight instructor certificate renewal is particularly unrealistic in ballooning: the provision in proposed § 61.197(b)(1) to show a record of training for at least five students in 24 months, at least 80 percent of whom passed the practical test on the first attempt. Several commenters indicate that one student per year per commercial-pilot instructor is more typical. One commenter also states that flight instructor refresher courses for balloonists would be cost prohibitive and impractical because there would be so few balloon instructors.

The commenters believe that the lack of flight instructors would result in fewer instructors familiar with local flying conditions. They believe that the lack of flight instructors also would force potential students and pilots requiring flight reviews to travel long distances to find flight instructors. Commenters also state that the low number of suitable flying days would make the instructor hour requirements hard to meet. Commenters generally contend that the proposal would have a devastating impact on the industry by reducing the availability of instruction, overall flight activity, balloon sales, and revenue related to locally-sponsored balloon events. The Governor of Nebraska, who opposes the proposal, states that the ''imposed hardship may eliminate the sport of balloon flying in Nebraska.'' The Mayor of Omaha also opposes the proposal because ''there is no evidence that the current system is not working.'' The Nebraska Department of Aeronautics also opposes the proposal.

Some commenters state that the FAA had previously made and rejected this proposal, and that no further economic or safety studies were made to justify proposing the flight instructor requirement again. Another commenter suggested, as an alternative to creating a flight instructor certificate, that instruction be given only by commercial balloon pilots with at least 200 hours flight time and who fly at least 50 hours per year. Another commenter with a similar suggestion added that the commercial pilots could be required to pass the advanced ground instructor written (knowledge) test. Other commenter-suggested alternatives included increasing the flight hour requirements for certification, particularly at the commercial pilot (balloon) level, and requiring commercial pilots who instruct to use a written syllabus and maintain records of the training.

Representatives of Balloon Excelsior, a balloon flight school and repair station, state that the proposal would result in better-trained, safer, balloon pilots and would encourage the growth of ballooning. They state that most balloon flight instruction under part 61 is ''casual'' and accomplished without a curriculum or proper documentation, often during paid passenger sightseeing flights with inadequate attention given to the student. These commenters state that while many instructors do a fine job, many do not, and send their students to take practical tests unprepared. According to these commenters, one result of the proposal would be better performance on biennial flight reviews, and that renewal requirements could be met through flight instructor refresher clinics, which are not cost prohibitive. One commenter states that he supports the proposal even though a scarcity of qualified pilots would initially hurt his balloon operation. He believes that the proposal would benefit the industry in the long run by increasing professionalism and improving safety. Another commenter who supports the proposal, with reservations, recommends reducing the number of students an instructor would have to endorse for renewal of the instructor certificate from five to two, every 24 months, but with a passing rate of 100 percent.

FAA Response: The FAA has decided to withdraw the proposed flight instructor certificate in the lighter-than-air category. After further review of the proposal, the FAA has concluded that operational requirements and accident/incident data do not establish a sufficient safety justification for the increased regulatory and economic burden. Section 61.133 of the final rule provides that a person with a commercial pilot certificate with a lighter-than-air category rating may: (1) Give flight and ground training in an airship or balloon for the issuance of a certificate or rating; (2) give an endorsement on a pilot certificate for an airship or balloon; (3) endorse a student pilot certificate or logbook for solo operating privileges in an airship or balloon; and (4) act as pilot in command of an airship under IFR or in weather conditions less than the minimum prescribed for VFR flight.

D. New Instrument Ratings

1. Single-Engine and Multiengine Ratings

Summary of the proposal/issue: The FAA proposed to amend § 61.5 to establish additional instrument ratings for single-engine and multiengine airplanes. For airplanes, currently only one instrument rating exists. Additionally, the FAA also proposed to establish single-engine and multiengine instrument ratings for flight instructors. The FAA requested public comment on its proposed conversion process for current holders of airplane instrument ratings to the new system.

Comments: Approximately 200 comments oppose the new instrument ratings for single-engine and multiengine airplanes. Approximately 20 commenters favor the proposal. Approximately 160 comments are in opposition to the single-engine and multiengine airplane instrument ratings for flight instructors.

ALPA supports the proposed instrument ratings for single-engine and multiengine aircraft. ALPA finds the proposal particularly important in light of the removal of the minimum-hour requirement for an instrument rating. The association contends that it would be inappropriate for very low time pilots to have their single-engine instrument rating also apply to multiengine airplanes.

GAMA supports class-specific instrument instructor ratings for single-engine and multiengine airplanes. GAMA asks why the FAA does not simply prohibit instrument instructors who do not hold a multiengine instructor rating from giving instrument instruction in multiengine aircraft. According to GAMA, this could be accomplished by adding a limitation on the CFI's certificate that states ''instrument instruction privileges are limited to single-engine aircraft.'' GAMA believes that flight instructors holding multiengine instrument instructor ratings should be able to provide instrument training in single-engine aircraft. The commenter states that all pilots possessing both multiengine and instrument instructor ratings on the effective date of the rule should be ''grandfathered'' and issued an instrument multiengine airplane rating without further examination or testing.

EAA, NAFI, and NATA oppose the proposal. EAA states that there is no safety justification for the change and that it will cause additional training and expense. NAFI expresses concern about current instrument pilots and instrument instructors who do not comply with the proposed certificate exchange procedures. NATA contends that the current system is safe and efficient, and states that the proposal would place an undue financial burden on those who wish to obtain the new ratings. NATA estimates the cost of the new multiengine rating at $1,250 for training (10 hours at $125/hour), and $300 for the practical test and designated examiner. NATA states that the current system, in which instrument proficiency is demonstrated during a multiengine instructor check ride, is sufficient. NATA also contends that any conversion of current flight instructor certificates and ratings should award any pilot holding a CFII and MEI certificate the new certificates upon implementation of the new regulations.

AOPA also objects to the proposal. The association believes that the current system, which requires an applicant for a multiengine airplane class rating or multiengine airplane instructor rating to demonstrate instrument or instrument instruction competency during the practical examination, is sufficient. AOPA comments that it appears from the NTSB investigation of the 1981 multiengine accident cited by the FAA in the NPRM that the pilot became disoriented in instrument meteorological conditions (IMC). AOPA believes that the accident had little to do with the adequacy of the pilot's training in instrument procedures for multiengine aircraft. AOPA maintains that the FAA should not make drastic policy changes based on a single event. According to AOPA, the proposal will be very costly for the pilot community and would discourage pursuit of the multiengine instrument rating. AOPA also states that if the FAA's intent in the proposed regulation is to close an apparent loophole that permits a CFII who is not an MEI to give instrument instruction in a multiengine airplane, then the regulation should state this rather than requiring the new certificates.

In its comment, AOPA also expressed concern about inconsistencies in the preamble to the NPRM and the actual language in the provisions for conversion of existing instructor certificates. AOPA notes that the preamble indicates that a person may exchange his or her existing instrument certificate for the new instrument airplane multiengine rating if one of three conditions is met. AOPA states that the third condition, which provides for the ''grandfathering'' of a person who held an airplane multiengine class rating and had satisfactorily completed the practical test for an instrument rating in a single-engine airplane before October 4, 1984, was omitted from the proposed rule. It is AOPA's position that the only pilots who should not receive automatic conversion to the new certificate are those who currently have a limitation on their certificates that states that operations are restricted to ''Airplane Multiengine VFR only.'' AOPA also contends that the conversion provisions favor instructors who teach full-time at flight schools, and that the provisions will result in a majority of multiengine airplane instructors losing their instruction privileges. According to AOPA, very few multiengine instructors actually provide instrument instruction in multiengine airplanes, and, therefore, they would be unable to meet the requirement of 20 hours of such instruction. AOPA further notes that a vast number of CFIIs have never endorsed a student for an instrument airplane practical test, and would also be unable to meet the conversion requirement for both the single-engine and multiengine CFII privileges. AOPA recommends that all current CFII-MEI instructors should be ''grandfathered'' under the new system.

Individual commenters who oppose the proposal in Notice No. 95–11 to create separate instrument ratings for single-engine and multiengine airplanes contend that the number of engines issue and the instrument procedures issue are independent, and that instrument procedures, including engine-out approaches, normally are part of the multiengine practical test. These commenters contend that instrument procedures do not essentially change from a single-engine to a multiengine airplane. Some commenters state that the proposal does not seem justified by the NTSB's recommendation, which was followed when the FAA instituted a policy to require that multiengine airplane rating candidates demonstrate proficiency in instrument procedures or receive a ''VFR only'' limitation with their multiengine rating.

One commenter who favors the two new instrument ratings states that the system would make instrument flying safer and instrument operations in a multiengine airplane ''easier.'' Echoing AOPA's comments, one individual commenter notes that instrument instructors who routinely instruct in multiengine airplanes typically do not endorse students for instrument rating practical tests. Such instruction is one of the conditions proposed for converting a current airplane instrument flight instructor certificate to the new system. However, the commenter states that such instructors may teach advanced courses for instrument- and

airline transport pilot (ATP)-rated pilots. Another commenter states that the proposed system of conversion to the new flight instructor airplane single-engine and multiengine ratings would place an unwarranted economic burden upon relatively new, part-time, or independent flight instructors. One commenter states that the FAA did not provide supporting safety data in the NPRM indicating that multiengine instrument instruction has been inadequate, and a number of commenters assert that there would be no safety benefit from the proposal. Consistent with AOPA's position, individual commenters state that they believe many flight instructors currently providing multiengine airplane instrument instruction would not qualify under the proposal. One commenter also notes that multiengine examiners may not qualify under the proposal either. One commenter suggests changing proposed § 61.201(h)(2)(i) to include time providing instrument competency checks in multiengine airplanes, while a number of commenters request a more liberal ''grandfather'' clause.

Another individual commenter expresses concern that the proposal would require an additional practical test in a multiengine airplane (apparently referring to separate practical tests for the multiengine rating and the multiengine instrument rating). He states that the current policy (of requiring demonstration of instrument proficiency on the multiengine practical test) is sufficient.

FAA Response: The FAA is persuaded by the public comments regarding the unintended negative effects that would result from the creation of multiengine and single-engine instrument and instrument instructor ratings. Current accident/incident data show that there are no safety problems resulting from the existing rules. Therefore, the FAA finds that there is insufficient safety justification for the increased regulatory and economic burden, and has eliminated the proposal from the final rule.

2. Airship

Summary of proposal/issue: The FAA also proposed to amend § 61.5 to establish an instrument rating for airships. The FAA noted that smaller, foreign' built airships are operated in the United States, and it was hoped that industry growth would be accompanied by the need for more airship pilots. A separate airship instrument rating was intended to remove an obstacle from the certification of commercial airship pilots desiring to fly smaller, non-IFR-equipped airships, and to help foster growth of this small segment of the aviation industry.

Comments: NAFI and AOPA oppose the proposed requirement for an instrument rating to instruct in an airship. The commenters state that there is no problem with existing training, which is conducted almost entirely in VFR conditions. AOPA also comments that such a requirement would increase training costs with no increase in safety. Individual commenters echoed the association's position on this issue. One individual commenter supports the proposal because it may foster the growth of the United States airship industry.

FAA Response: The FAA has decided not to establish an instrument rating for airships, because operational requirements and accident/incident data do not establish a sufficient safety justification for the increased regulatory and economic burden.

3. Powered-Lift

Summary of proposal/issue: The FAA proposed to amend § 61.5 to establish an additional instrument rating for powered-lifts, with a corresponding instructor rating.

Comments: Some commenters oppose the instrument rating requirements for powered-lifts. However, most commenters objected in general to the additional powered-lift category of aircraft.

FAA Response: As discussed in section IV,E of this preamble, the FAA is confident that powered-lifts will be useful in civilian operations in the future, and a separate instrument rating will be required, which is incorporated into the rule.

E. Requirements for Instrument Ratings

Summary of proposal/issue: The FAA proposed numerous revisions to § 61.65, the most significant of which was revising the eligibility criteria for applicants for the instrument rating to parallel standards set by the International Civil Aviation Organization (ICAO). The proposal eliminated the requirement for a minimum of 125 hours of total flight time, including 50 hours of pilot-in-command cross-country time. This proposed change to § 61.65, comments received regarding the proposal, and the FAA response are discussed here as one major issue. Other changes to § 61.65 are discussed in the section-by-section discussion.

Comments: Approximately 150 comments address the proposed elimination of the minimum 125-hour requirement. Of these, approximately 110 favor the proposal, and the rest are either in opposition or suggest an alternative. Approximately 120 comments specifically address the 50-hour cross-country experience requirement, with 75 of those supporting the proposal and the rest either in opposition or suggesting an alternative. The commenters' reasoning on the two proposals follow essentially the same lines. Those who favor eliminating the requirements consider them arbitrary and unnecessary obstacles for pilots who seek the instrument rating, which can make them safer pilots. Those who favor maintaining the requirements state that exposure to different operating environments is important for ''seasoning'' pilots so they are better prepared for flight under IFR.

GAMA supports eliminating the 125-hour total time requirement for an instrument rating. GAMA comments that a disproportionate number of general aviation accidents occur when VFR pilots encounter IFR weather conditions, and allowing pilots to begin instrument training sooner will positively impact safety. GAMA also supports eliminating the 50-hour cross-country requirement for similar reasons. AOPA echoes GAMA's comments and states that encouraging such training is probably the single greatest step in decades toward reducing the general aviation accident rate.

FAA Response: The FAA has determined that eliminating the 125-hour total time requirement removes burdensome regulations that add cost without demonstrated need, parallels ICAO standards and recommended practices, and will encourage more pilots to receive instrument training at an earlier stage in their career. This proposal is adopted in the final rule. After further review, the FAA has decided to retain the 50 hours of cross-country pilot-in-command time required for the instrument rating. The FAA deems that this change is necessary in order to comply with minimum requirements under Annex 1 to the Convention on International Civil Aviation and for U.S. pilot certificates with an instrument rating to be recognized internationally.

F. New Aircraft Category and Class Ratings

1. Powered-Lift

Summary of the proposal/issue: The FAA proposed to add a powered-lift category for the private pilot through ATP certificates, as well as for the flight instructor certificate. Minimum experience requirements for the

powered-lift ratings were developed based on the current minimum experience requirements for airplane ratings.

Comments: Approximately 65 comments addressed the establishment of the powered-lift category. Of these comments, over 40 oppose the proposal and more than 20 express support, while the rest either do not express a clear opinion or offer other suggestions.

Both NAFI and EAA oppose the proposal. NAFI states that there is insufficient information available for the aviation industry to properly evaluate the establishment of powered-lift requirements, and recommends deleting all references to powered-lifts from the proposed regulations. EAA indicates its support for NAFI's comments.

AOPA also questions the need for a separate airman certificate category for powered-lifts. They believe that the implementation of the new category is premature, if not entirely unnecessary, because there are no viable aircraft of this type on the market today. AOPA states that the skills necessary to fly this type of aircraft would duplicate those of the nearly 1,200 ATPs who are already certificated in both airplanes and rotorcraft. AOPA suggests that the proposal be amended to require future powered-lift airmen to possess ratings in both airplanes and helicopters, and specifically type rate these individuals when and if powered-lifts reach the market. According to AOPA, this approach would eliminate a myriad of testing, licensing, and certification requirements that will likely remain dormant for many years. AOPA recommends withdrawing all sections in the proposed rule relating to powered-lift aircraft until it becomes evident that such aircraft will find applications in the civil marketplace.

FAA Response: The FAA has determined that a new powered-lift category should be established. Industry is currently developing powered-lifts, and current pilot certification standards do not adequately reflect the certification requirements for powered-lifts. Current certification standards were not drafted with the intent of certificating powered-lift pilots. The FAA recognizes the importance of anticipating further developments in aviation technology. Therefore, the FAA contends that these new regulations are necessary to respond to future needs of aviation. The proposal is adopted in the final rule and modified to include provisions permitting the use of approved powered-lift flight simulators and approved powered-lift flight training devices to satisfy certain training and aeronautical experience requirements for persons seeking certification to pilot powered-lifts.

2. Glider Class Ratings

Summary of the proposal/issue: The FAA proposed to establish class ratings for powered gliders and nonpowered gliders within the glider category for the private pilot through commercial pilot certificates, as well as the flight instructor certificate.

Comments: Approximately 85 comments are in opposition to the new glider class ratings and approximately 40 are in favor. Another 20 comments do not express a clear opinion on the question or suggest alternative proposals. However, many of these 20 comments appear to favor the concept of the two class ratings, but contend that glider pilots who have nonpowered glider experience as well as an airplane pilot certificate should be considered qualified for the powered glider rating. One commenter states that glider flight instructors who performed their practical test in a nonpowered glider should not be required to demonstrate 20 hours of instruction experience in that class to convert their flight instructor certificates as proposed in § 61.201.

A number of the proposal's supporters submitted signed form letters. The letters recommend dividing the glider category into nonpowered glider and powered-glider classes, and call for the incorporation of the powered glider flight and test requirements of Advisory Circular (AC) No. 61–94 into the regulation. The form letter proposes a different conversion system from current certificates to the new certificates than what was proposed in §§ 61.5 and 61.201. The letter recommends that flight instructors be permitted to add the powered-glider class rating to their certificates after completing 20 hours of flight time in a powered glider and completing training and testing in accordance with AC No. 61–94; or by holding a flight instructor airplane single-engine land rating and logging 20 hours in a powered glider. The same letter recommends that holders of private or commercial glider pilot certificates be permitted to receive the powered glider rating if they have logged either a minimum of 25 hours, including at least 10 flights in a powered glider during the preceding 24 months, have a current flight review, and have a logbook entry showing completion of training in accordance with AC No. 61–94. The form letter also recommends that holders of glider pilot certificates be able to convert to the new certificate with a nonpowered glider class rating if they have completed a current flight review.

ASA's comment opposes the separation of the glider category into powered and nonpowered-glider classes. The commenter states that auxiliary-powered sailplanes are, for all practical purposes, nonpowered gliders, except for the ability to self-launch. ASA suggests changes to the proposed regulations that would meet the goals of the NPRM, with respect to gliders, without requiring the creation of separate classes within the glider category. ASA recommends that training requirements for gliders be consolidated under a single glider category with subheadings listing additional training for powered sailplanes. ASA proposes that AC No. 61–69, which addresses powered sailplanes, should be referred to in the regulation specifying the areas of operation for glider category ratings. Pilots seeking to obtain a powered-glider rating should first be required to complete the training required for a nonpowered glider rating. ASA proposes expanded definitions of ''flight time'' and ''flight training'' that take gliders into account.

ASA also comments that pilots and flight instructors with glider category ratings, including those currently experienced in auxiliary-powered sailplanes, should retain their ratings and should not be required to take an additional practical test. ASA also states that the proposed conversion requirements for glider flight instructors do not consider the fact that much advanced glider instruction takes place entirely in single-seat gliders, with the instructor in one glider and a student following the instructor in another glider. ASA believes a statement authorizing such training as flight instruction is necessary.

SSA opposes the division of the glider category into two classes because the flight characteristics of gliders, whether powered or nonpowered, are essentially the same. SSA acknowledges that powered gliders may require knowledge levels similar to those of powered aircraft, but believes that there are similarities between all aircraft, and that these similarities are addressed in the knowledge and flight tests. SSA is concerned that the FAA does not recognize the efforts expended by instructors and flight schools to ensure pilots are adequately trained in these areas. SSA notes that the existence of AC No. 61–94, which, the commenter states, has been instrumental in achieving safe operation of auxiliary-powered sailplanes. SSA contends that there are only 200 licensed powered sailplanes in the United States, and that

there is an inadequate distribution of two-place powered sailplanes to respond to the NPRM's requirements. SSA states that it ''seems beyond the scope of lessening the burden of regulatory reform to establish a class rating for such a minimal size group who has not shown a propensity to denigrate safety.'' SSA suggests that pilots should be required to acquire a ''certificate with a glider category,'' obtain a logbook endorsement for each launch method demonstrated, and follow a syllabus to reach certification.

EAA supports SSA's comments to the proposed class ratings for powered and nonpowered gliders and believes there is no safety justification to support the proposal. EAA specifically objects to the proposed powered glider rating for private pilots as set forth in § 61.109(b)(5), and recommends incorporating a power glider endorsement rather than adding a rating.

NAFI and AOPA also object to the establishment of separate glider class ratings. According to these commenters, an endorsement specifying ''self-powered launch'' privileges would be sufficient. NAFI also states that the FAA has failed to provide evidence justifying the proposal on safety grounds. The commenters contend that if the proposal is adopted, all present glider pilots should automatically receive a new certificate with both powered and nonpowered glider privileges. NAFI also states that an individual who holds a glider rating and an airplane category rating should be able to obtain a powered glider rating without a further showing of proficiency.

Some of the individual commenters who oppose the proposal state that AC No. 61–94 addresses the issue of flight instructors endorsing pilots to fly powered gliders. One commenter states that most glider instructors are also rated in powered aircraft, and that the proposed system would make it more difficult to find an appropriate instructor.

FAA Response: After reviewing the comments, the FAA has decided not to create separate class ratings for nonpowered and powered gliders. Instead, the FAA has decided to accept the alternative suggested by industry that would establish training and endorsement requirements for specific glider operations in lieu of placing limitations on pilot certificates as is currently required. This change will reduce the regulatory burden on the public, as well as the administrative burden for the FAA, while providing a level of safety equivalent to the current regulations. The FAA has added paragraph (k) to § 61.31, which provides training and endorsement requirements for operating gliders.

G. English Language Requirements

Summary of the proposal/issue: The FAA proposed to delete exceptions to requirements for applicants to be able to read, speak, write, and understand the English language at all certificate levels and ratings, as well as in the case of certificates issued on the basis of foreign pilot licenses under § 61.75. The FAA also proposed to delete references to the ability to write in English and to speak without accent or impediment that would interfere with two-way radio communication at the ATP certificate level in § 61.151.

Comments: ALPA and NAFI support the proposed English language requirements. NAFI believes the potential for communications error will decrease under the proposal.

IDPA states that, while it would support a proposal to standardize the English language fluency requirements, it cannot support the proposed change because it would discriminate against individuals who are deaf, hard of hearing, or otherwise speech impaired. IDPA opposes eliminating the provision that allows special limitations to be placed on pilot certificates restricting operations in airspace where the English language is required. IDPA suggests that the proposal be modified to allow the retention of the special limitation provisions for Americans fluent in the English language who are deaf, hard of hearing, or speech impaired.

The NSFD states that it supports the opinions expressed by IDPA. The DCARA joins in these concerns and states that there is no reason to restrict deaf and speech-impaired pilots from flying in airspace where communications are not necessary.

PVA opposes the effect of the proposed changes to the English language requirements on individuals with hearing or speech impairments, and states that the changes would make these individuals ineligible for pilot certification under §§ 61.96, 61.103, or 61.123 on the basis of their disability. PVA urges the FAA to ensure that the eligibility requirements do not arbitrarily discriminate on the basis of a disability.

In its comment, AOPA states that it supports the position of IDPA. AOPA states that qualifying language that made special provision for hearing and speech impaired individuals has been inappropriately deleted from §§ 61.103(b) and 61.213(a)(2). AOPA further comments that §§ 61.83(c), 61.96(b), and 61.123(b) also single out qualified pilots with speech and hearing impairments, and are likely to be in violation of the Americans with Disabilities Act of 1990.

HAI also expresses a concern that someone who is speech or hearing impaired would not meet the requirements to read, write, speak, and understand the English language. The commenter also objects to proposed § 61.83, because many foreign students who train in the U.S. do not become more fluent until later in their training, and would therefore be eliminated from eligibility under the proposed change. HAI recommends retaining the language of the existing rule.

Individual commenters also express concern about the proposal's effect on speech and hearing impaired individuals. Other commenters who did not address the implications for speech and hearing impaired individuals support the proposal, stating that it would improve communications and safety. One commenter feels that the FAA should not eliminate the rule language requiring ATP applicants to speak English without accent or impediment and disagrees with the FAA's statement that the rule language is superfluous in light of the proposed changes to the rule.

FAA Response: The FAA agrees that there was an unintended effect in the proposed rule change that would prevent deaf pilots, and pilots with other medical conditions that have a command of the English language, from meeting the eligibility requirements for a pilot certificate. The FAA has determined, however, for safety concerns, that operations in the NAS do require a basic command of the English language. Therefore, as proposed, the FAA is removing the exceptions that permit pilots to be certificated without a basic command of the English language. The FAA has added a provision to the eligibility requirements for pilot certification to permit individuals who have a command of the English language, but who may not be able to meet the proposed requirements due to a medical condition, to have limitations placed on their pilot certificates that would continue to permit them to exercise the privileges of their certificate.

H. Areas of Operation

Summary of the proposal/issue: In Notice No. 95–11, the FAA proposed general areas of operation to be addressed in training and on practical tests, for all pilot and instructor certification. This was a departure from specifying the required maneuvers and procedures in the FAR. The specific

tasks to be performed would be contained in the practical test standards (PTS), based on the areas of operation listed in the regulations.

Comments: Approximately 65 comments address the proposal to use generalized areas of operation in the regulations, and a large majority opposed the proposal. Commenters object that the FAA could revise requirements for certificates and ratings without issuing an NPRM and soliciting public comments. One commenter states that this change would not be in compliance with the Administrative Procedures Act. One commenter questions the proposed terminology and states that while the proposal refers to performing areas of operation, pilots actually perform tasks within areas of operation, which the commenter states should clearly be referred to in the regulation as those specified in part 61.

SSA supports the FAA's decision for the FAR to refer to those areas of operation and tasks that coincide with the PTS. SSA believes that this change will eliminate the confusion between the PTS and the FAR. However, SSA expresses a concern that this proposed change will only result in the promulgation of more tasks for each area of operation. According to SSA, the cost of learning to fly has significantly increased because the amount of required training has changed over the years, and the commenter does not believe that these increased requirements have resulted in a significant decrease in accidents.

FAA Response: The FAA is adopting this proposal in order to be more responsive to advances in training and technology, and to accident and incident trends. While the FAA recognizes the commenters' concerns, the FAA finds that they are unfounded. Changing the hour requirements for certification in the future would need to be conducted using a formal rulemaking process with its associated notice and comment procedures. When revising the PTS, the FAA's Flight Standard Service actively seeks comments from the public, and continuously accepts comments requesting changes for future PTS revisions.

V. Section By Section Analysis

Part 1—Definitions and Abbreviations

Section 1.1 General definitions.

The FAA proposed revising the definitions of balloon, flight time, and pilot in command.

Comments: Individual commenters agree with the FAA's concept of distinguishing between the requirements for gas balloons and balloons with airborne heaters, but suggest variations on use of the terminology. One commenter, for example, suggests using ''gas balloon'' and ''hot air balloon;'' another, however, suggests ''balloon'' and ''balloon with airborne heater.''

FAA Response: After reviewing the comments, the FAA has decided to modify the language defining ''balloon'' to state ''a lighter-than-air aircraft that is not engine driven, and that sustains flight through the use of either gas buoyancy or an airborne heater.'' In addition, the FAA has modified the definition of ''pilot in command'' in proposed paragraph (b)(4), withdrawing the reference to ''actual flight conditions.'' A number of commenters oppose the use of this language in the proposed rule. Their comments are addressed in the discussion of § 61.1. The definition of flight time was adopted as proposed except for a modification that replaced the term ''nonpowered glider'' in the proposed definition with ''glider without self-launch capability.'' The FAA also determined that the definition of ''powered-lift'' should be added to this section because the new powered-lift category is adopted in the final rule.

The proposal is adopted with the changes discussed and with other minor editorial and formatting changes.

Discussion of Specific Proposals

The FAA proposes to change the title of part 61 to ''Certification: Pilots, Flight Instructors, and Ground Instructors,'' because part 143 has been eliminated and the rules governing the certification of ground instructors have been moved to part 61.

Special Federal Aviation Regulations

SFAR No. 58 Advanced Qualification Program

The final rule retains the reference to SFAR No. 58.

SFAR No. 73 Robinson R–22/R–44 Training and Experience Requirements

The final rule retains the provisions of SFAR No. 73.

Subpart A—General

Section 61.1 Applicability and definitions.

Section 61.1(a)

Section 61.1 is revised by adding the provision in paragraph (a)(2) for pilot authorization, as well as deleting the reference to § 61.71 and inserting a reference to ''courses approved by the Administrator under other parts of this chapter'' to incorporate training programs under SFAR No. 58, proposed training centers, and part 141 pilot schools.

Section 61.1(b)

In Notice No. 95–11, the FAA proposed to create a new section, 61.1a, to clarify 15 terms used throughout part 61 as follows: aeronautical experience; airman certificate; authorized ground instructor; authorized flight instructor; cross-country time; examiner; flight training; ground training; instrument approach; instrument training; knowledge test; pilot time; practical test; supervised pilot-in-command time; and training time. For ease of reference, proposed § 61.1a and the definition of terms contained in current § 61.2 as adopted in Amendment No. 61–100, ''Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers,'' have been incorporated into § 61.1.

Comments: Approximately 200 comments were received in response to the clarification of terms. SSA comments that part 1 is the appropriate place to define terms, instead of § 61.1a. One commenter, who was in general agreement with the proposed clarification of terms section, requests that the FAA define ''training'' for purposes of logbook entries. Another requests that ''compensation or hire'' be defined in § 61.1(a). Another commenter requests that the FAA define the term ''route'' as used in proposed § 61.129(a)(4)(ii). Other comments specifically address the proposed terms and definitions.

AOPA opposes the exclusion of student pilot certificates from the definition of airman certificates because these certificates are subject to most of the part 61 provisions for airman certification.

SSA supports the adoption of the term ''supervised pilot in command'' because it will help eliminate the confusion surrounding ''solo flight'' and reinforces the principle that the CFI supervises all solo flights by students. GAMA supports allowing student pilots to log pilot-in-command time under certain conditions, but it finds the definition of ''supervised pilot in command'' vague and open to varying interpretations.

AOPA urges the FAA to withdraw the entire concept of ''supervised pilot in command'' and retain the current definitions of dual and solo instruction time. Although the commenter supports clarifying the policy with respect to permitting student pilots to log solo time as pilot-in-command time toward future certificates and ratings, AOPA believes that there are numerous conflicts between the application of this new term and many sections in part 61.

According to the commenter, the term creates confusion as to what truly is ''solo'' time. AOPA also states that the proposed definition raises liability concerns for instructors because of the use of the term ''supervised'' for flights when an instructor does not truly supervise a student or pilot. The commenter notes there is no provision in proposed § 61.51 for logging supervised pilot-in-command time.

NAFI opposes the wording of the definition of ''supervised pilot in command.'' NAFI states that, except for aircraft type certificated for more than one crewmember, ''a flight instructor should not be on board an aircraft when a student is conducting a supervised pilot-in-command flight.'' NATA states that it supports permitting student pilots to log pilot-in-command time but that proposed § 61.51 provides adequately for this. NATA recommends retaining the term ''solo'' to eliminate any confusion associated with the new term. NATA also states that the proposed term does not clearly indicate whether an instructor is permitted to be on board an aircraft. NATA also states that the term does not appear to be applicable to advanced training.

HAI comments that the proposed term leads to confusion in other areas of the regulations and recommends retaining the term ''solo.'' The commenter asks whether pilot-in-command time counts as supervised pilot-in-command time.

FAA Response: In response to the cited comments, the FAA acknowledges that certain definitions would not clarify part 61. Therefore, the FAA has decided to not include the definitions for ''airman certificate,'' ''authorized ground instructor,'' ''authorized flight instructor,'' and ''supervised pilot in command'' in the final rule. The FAA agrees that the definition of ''airman certificate'' conflicts with the U.S. Code and the FAR, and should be deleted. The FAA has removed the definitions for ''authorized flight instructor'' and ''authorized ground instructor'' and replaced them with a single definition for ''authorized instructor'' as explained in the analysis of § 61.1(b)(2) below. The concept of supervised pilot in command was created only to permit the logging of student solo time as pilot-in-command time under § 61.51. The proposed definition created difficulty in determining when supervision was occurring, and has been removed.

Section 61.1(b)(1) Aeronautical experience.

The FAA proposed a definition of aeronautical experience as pilot time obtained in an aircraft, flight simulator, or flight training device for meeting the appropriate training and flight time for an airman certificate, rating, flight review, or recency of flight experience.

Comments: Although pilot time in a flight simulator or flight training device is addressed in certain definitions such as ''aeronautical experience,'' one commenter points out that there is no specific definition to provide for training conducted in a simulator.

FAA Response: The intent of the section is to ensure more consistent use of terms throughout part 61. The FAA finds that the commenter's statement is outside the scope of Notice No. 95–11, and that the definition of ''aeronautical experience'' clarifies the rule and should be adopted as proposed.

Section 61.1(b)(2) Authorized instructor.

The FAA proposed definitions for ''authorized flight instructor'' and ''authorized ground instructor'' in §§ 61.1a (c) and (d).

Comments: ATA expresses concern regarding the use of the term ''authorized flight instructor'' in proposed § 61.1a(d). ATA notes the use of the term ''authorized instructor'' in § 61.157(f) and states that the term was not intended by the FAA to mean the holder of a flight instructor certificate. Rather, ATA states that the FAA meant that the term ''authorized instructor'' could also include an instructor qualified under the air carrier regulations of part 121.

AOPA strongly opposes the proposed change from the term ''certificated flight instructor'' to ''authorized flight instructor.'' AOPA notes that references are made to CFIs in thousands of publications, videos, books, and government manuals. The commenter also is concerned that the proposed terminology could have a deleterious effect on the liability exposure of flight instructors. In addition, AOPA comments that it appears that the FAA is relinquishing its role as the sole certificator of airmen, and that FAA counsel is attempting to circumvent the established procedures for certificate enforcement actions since there are no formal legal procedures in place for the removal of an authorization. The commenter believes that this could compromise a flight instructor in any certificate or civil action. The commenter contends that no justification is presented for this proposed change.

NAFI also opposes this proposed change in terminology. Consistent with AOPA's comment, NAFI states that the term ''CFI'' would have to be replaced in every reference at considerable expense to government and industry.

Six other individual commenters oppose the proposed definition of ''authorized flight instructor.'' Some of the commenters state there is no reason to change from the commonly used term ''certified (certificated) flight instructor'' (CFI) to ''authorized flight instructor,'' or ''AFI.'' One commenter adds that the ''marginal clarification'' intended by the new term does not warrant the confusion likely to result among students as well as the need to revise books, videos, and other training materials.

FAA Response: The FAA has removed the definitions of ''authorized flight instructor'' and ''authorized ground instructor'' and replaced them with a new term, ''authorized instructor,'' which encompasses commercial lighter-than-air pilots and ATP certificate holders who may also provide training. Additionally, the FAA has modified the definition to include persons providing training under part 142. With respect to the commenters' fear that the term ''certificated flight instructor'' will no longer be valid due to the change, the FAA stresses that flight and ground instructors are still certificated under part 61, and therefore will remain certificated instructors.

Section 61.1(b)(3) Cross-country time.

In Notice No. 95–11, cross-country time was defined for three separate circumstances: (1) For persons who hold a private, commercial, or airline transport certificate; (2) for persons applying for a private or commercial pilot certificate or instrument rating; and (3) for military pilots.

Comments: NAFI indicates approval for the clarification of this term. HAI recommends removing the requirement for cross-country flight time to require landing by changing proposed § 61.1a(e)(1)(ii) ''landing point'' to ''destination.'' HAI's justification for the modification is that many CFIs, CFIIs, and aerial photographers may fly long distances without landing at any point other than their point of departure. The commenter states that its proposed change will permit these pilots to log cross-country time. The commenter also points out that the proposed 50-nautical mile requirement for all cross-country flights is inconsistent with the 25-nautical mile cross-country flight requirement for pilots seeking certification in helicopters.

AOPA supports clarifying what constitutes cross-country flight time based upon the certificate held by a pilot. The commenter, however, opposes the cross-country definition because it relies upon the undefined term ''actual flight.'' AOPA is concerned

that the definition effectively excludes taxi, run-up, takeoff, and landing roll as loggable flight time. According to AOPA, this unloggable time could be significant if full-stop landings are required for currency training.

While one individual commenter expresses agreement with the proposed definition, others propose changes that would make the definition more appropriate for different categories of aircraft and types of operations. Commenters state that the definition is not appropriate for balloon operations, which do not necessarily use airports and in which a 50-nautical mile flight may be unusually far, or for glider operations, which may cover long distances but begin and end at the same site. One commenter suggests treating ''mission pilots,'' such as those conducting fish-spotting and fire and pipeline patrol operations, the same as military pilots. To account for such cases, one commenter suggests provisions under which cross-country flight would include any flight that departs an airport and its traffic pattern and lands at another location, or, for a flight that does begin and end at the same location, would include any flight of more than 50 nautical miles in powered aircraft, or 25 nautical miles in nonpowered aircraft. That commenter states the proposal would apply to flights in which dead reckoning, pilotage, electronic, or radio navigation aids were used.

FAA Response: In response to the commenters' concerns, the FAA has modified the definition of ''cross-country time'' to remove any distinction between flight and actual flight. The definition was also modified to permit flights of 25 nautical miles for a private rotorcraft rating to be considered as cross-country flights. The definition was modified to include references to future navigation systems rather than restricting cross-country navigation to present methods and systems. In response to comments received, the FAA modified the definition of cross-country time to permit a commercial pilot, airline transport pilot, or military pilot qualified for a commercial pilot rating to log cross-country time without requiring a landing at a point 50 nautical miles from the original point of departure.

Section 61.1(b)(4) Examiner.

In Notice No. 95–11, the term referred to persons authorized to conduct practical tests or knowledge tests under part 61. However, the FAA has modified the definition in the final rule to include persons who conduct pilot proficiency tests.

Section 61.1(b)(5) Flight simulator.

The FAA has modified and combined the current definitions of ''flight simulator, airplane'' and ''flight simulator, helicopter,'' as adopted in Amendment No. 61–100, to include all categories of aircraft.

Section 61.1(b)(6) Flight training.

In Notice No. 95–11, the term ''flight training'' was defined as training other than ground training received from an authorized flight instructor in actual flight in an aircraft.

Comments: For the same reasons expressed in its comment on the use of the term ''actual flight'' in defining cross-country time, AOPA opposes the use of the term in the definition of ''flight training.'' SSA does not object to this definition, but notes that it narrows the ''perception of dual time,'' which could include simulators.

FAA Response: The intent of the section is to ensure more consistent use of terms throughout part 61. The FAA believes the definition achieves this goal and should be adopted as proposed with a modification to remove any distinction between flight and actual flight in response to commenters' concerns.

Section 61.1(b)(7) Flight training device.

The FAA has modified the current definition of ''flight training device,'' as set forth in Amendment No. 61–100, to include all categories of aircraft.

Section 61.1(b)(8) Ground training.

In Notice No. 95–11, the term ''ground training'' is defined as training other than flight training received from either an authorized ground instructor or an authorized flight instructor. However, the FAA has modified the definition in the final rule to replace the phrase ''authorized ground or flight instructor'' with the term ''authorized instructor.'' This change was discussed in the analysis of § 61.1(b)(2). Except for this change, the definition is adopted as proposed. No substantive comments were received.

Section 61.1(b)(9) Instrument approach.

Notice No. 95–11 described the instrument approach as an approach procedure, defined in 14 CFR part 97, conducted to an established minimum descent altitude (MDA) or decision height (DH) or, if necessary, to a higher altitude selected by the air traffic control (ATC) facility with jurisdiction over that airspace for safety reasons.

Comments: AOPA believes that there is a potential conflict between the proposed definition of ''instrument approach'' in § 61.1a(i) and the instrument proficiency requirements of § 61.57(c)(1)(i) because the definition requires that the approach be flown to MDA or DH. The commenter also is concerned that under the proposed definition, an approach not flown to MDA or DH could be logged only if ATC considered it unsafe. AOPA believes that a pilot is in a better position to determine safety issues. AOPA also points out that the majority of training flights are conducted in VFR conditions with the aid of air traffic services. According to the commenter, the proposal would pose an economic and safety threat by forcing pilots to continue an approach under unsafe conditions in order to log it and avoid the cost of repeating the approach, or to terminate the approach for safety reasons before it could be logged.

NAFI also opposes the wording in this provision, because a typical descent in which the aircraft breaks out of the overcast before reaching MDA would not be loggable.

Some individual commenters also state that this definition may be overly restrictive, because practice approaches often are conducted under VFR and without involvement of ATC. These commenters state that the pilot, safety pilot, or flight instructor may determine the need to terminate the approach prior to reaching MDA or DH for safety reasons. Another commenter states that it is beneficial for beginning instrument students to complete some approaches visually so they better understand issues related to transitioning from instruments to visual flight. That commenter also indicates that in approaches conducted under IFR, pilots may sight the airport or runway prior to reaching MDA or DH if weather conditions permit. One commenter suggests revising the definition to permit the pilot to terminate the approach prior to DH or MDA for safety reasons. Another commenter proposes to define ''instrument approach'' as ''* * * an approach procedure defined in part 97 and conducted in accordance with that procedure or as directed by ATC to a point beyond an initial approach fix defined for that procedure.'' The commenter explains that this definition would allow for logging instrument approaches that require some portion of the published approach procedure to be followed in order for the pilot to establish visual references to the runway. The commenter suggests that for specific purposes such as training or currency requirements, the term could refer to descent to the MDA or DH, or to the

missed approach point, which may occur after the MDA is reached.

FAA Response: To address the public's concerns, the definition of ''instrument approach'' was modified to remove any requirement that the approach be conducted to DH, MDA, or to a higher altitude selected by ATC in order to be considered an instrument approach.

Section 61.1(b)(10) Instrument training.

Notice No. 95–11 defines instrument training as that time in which instrument training is received from an authorized flight instructor under actual or simulated instrument flight conditions.

Comments: One commenter expresses concern regarding the lack of a sufficient provision for training conducted in simulators, and suggests a definition for ''simulated flight'' and for ''instrument training,'' which would encompass training received in a flight simulator or flight training device. Another commenter states that the proposed definition does not refer to authorized ground instructors.

FAA Response: Training received in flight simulators is outside the scope of the rule, and is addressed in another rulemaking project (Notice No. 92–10), as explained in section II. The term ''authorized instructor'' is used as explained in the analysis of § 61.1(b)(2), and the definition of instrument training has been modified to reflect this change.

Section 61.1(b)(11) Knowledge test.

The term ''knowledge test'' replaces ''written test,'' because the FAA believes the term ''knowledge test'' is a more inclusive term that incorporates the use of computer testing on the aeronautical knowledge areas in part 61. No substantive comments were received, and the definition is adopted as proposed.

Section 61.1(b)(12) Pilot time.

The FAA inadvertently failed to discuss this proposed definition in the NPRM preamble. However, in response to requests for legal interpretations as to what constitutes ''pilot time,'' the FAA included the definition of ''pilot time'' in the proposed rule.

Comments: A commenter expresses strong opposition to the inclusion of training given in an approved flight simulator or approved flight training device in the proposed definition of ''pilot time.''

FAA Response: Since the early 1980's, the FAA has recognized the importance of flight simulators and flight training devices, and has issued over 30 exemptions to provide for the use of simulators and flight training devices. Therefore, the final rule reflects established FAA policy.

Section 61.1(b)(13) Practical test.

The proposed definition included both oral and flight testing or testing in an approved flight simulator or flight training device on the areas of operation for an airman certificate, rating, or authorization. The definition is changed in the final rule to remove the reference to ''actual flight.'' Except for this change, the definition is adopted as proposed. No substantive comments were received.

Section 61.1(b)(14) Set of aircraft.

The FAA has modified the current definition originally set forth in Amendment No. 61–100 from ''set of airplanes or rotorcraft'' to ''set of aircraft'' to include all categories of aircraft.

Section 61.1(b)(15) Training time.

Notice No. 95–11 discussed ''training time'' as training received in actual flight from an authorized flight instructor, on the ground from an authorized ground or flight instructor, or in a flight simulator or flight training device from an authorized ground or flight instructor.

Comments: AOPA opposes the use of the term ''actual flight'' in the definition of ''training time'' because it effectively excludes taxi, run-up, takeoff, and landing roll as loggable flight time. According to AOPA, this unloggable time could be significant if full-stop landings are required for currency training.

FAA Response: The definition of ''training time'' was modified in the final rule to remove any distinction between flight and actual flight. Taxi and run-up time performed for the purpose of flight can be logged as training time.

Section 61.2 Certification of foreign pilots, flight instructors, and ground instructors.

In Notice No. 95–11, the FAA proposed to revise § 61.2 to include a provision for ground instructor certificates. As previously noted, Amendment No. 61–100 redesignated this section as current § 61.3. The FAA also proposed to permit a person who is not a citizen of the United States or a resident alien of the United States to: (1) complete a knowledge or practical test outside the United States; (2) be issued an additional category, class, instrument, or type rating, as applicable on a U.S. pilot certificate; and (3) be issued an additional renewal, or reinstatement of a category, class, or instrument rating for a U.S. flight instructor or ground instructor certificate.

Comments: ALPA expresses concern over proposed § 61.2, which, the commenter states, makes it easier for a person who is neither a U.S. citizen nor a resident alien to obtain a U.S. pilot certificate. ALPA urges further amendment of this regulation as follows: ''A certificate issued under this subsection may not permit the holder to serve as a required crewmember on an aircraft in the commercial operations of a U.S. carrier.'' ALPA cites ''the need to protect quality piloting jobs for U.S. citizens and resident aliens.'' According to ALPA, future growth in U.S. air carrier operations will be on international routes, and there are indications that U.S. carriers are considering hiring noncitizen, nonresident aliens as flight crew for these operations.

AOPA opposes the wording of proposed § 61.2 because it appears that the current regulation has been changed to the detriment of foreign pilots seeking U.S. certification. According to AOPA, the proposed language places a different emphasis on the word ''need,'' implying that the discretion to determine whether a pilot really ''needs'' a certificate is left to the Administrator. The commenter recommends retaining the original language. It is AOPA's position that, instead of attempting to limit the issuance of U.S. pilot certificates to foreign airmen, the FAA should aggressively pursue reciprocal rights for U.S. certificated pilots in foreign countries because U.S. certificates are not normally recognized as the equivalent of certificates issued in other countries.

FAA Response: The FAA notes ALPA's concerns but does not find the commenter's specific proposal to be within the scope of this rulemaking. As explained in the preamble to Notice No. 95–11, the existing provisions of § 61.2 limit U.S. training and airplane manufacturing companies from expanding their business into the international aviation market. The proposed rule was written to address this problem. With regard to AOPA's comment concerning the language of the proposed rule, the FAA finds that the proposed rule does not differ substantively in this regard from the existing rule. The rule is adopted as proposed.

Section 61.3 Requirement for certificates, ratings, and authorizations.

As previously noted, Amendment No. 61–100 redesignated this section as current § 61.5.

Section 61.3(a) Pilot certificate.

The FAA clarified the requirement in § 61.3(a) that a pilot certificate must be in the person's ''personal possession'' whenever the person exercises the privileges of the certificate.

Comments: ALPA supports the requirements of proposed § 61.3(a) on the possession of certificates.

HAI comments that while the loss of a pilot certificate during a trip may be considered remote, it has occurred. The commenter contends that because the loss of a certificate does not affect the safety of an operation, a pilot should not be unduly penalized. HAI recommends modifying § 61.3(a) to provide an exception in the case of operations under part 121 or part 135 where a procedure has been approved for interim operations after the accidental loss of a pilot certificate. HAI notes that while the conditions for granting an approval for such a procedure for part 121 and 135 operators are beyond the scope of Notice No. 95–11, the proposed exception can be implemented immediately, and details associated with the procedures could be included in an AC or in FAA handbook material, pending the determination of the need to change part 121 or part 135.

EAA and NAFI oppose the proposal and contend that pilot records can be obtained at any time through the use of computers and electronic media. These commenters do not believe the proposal will enhance safety and, instead, might expose pilots to inadvertent violations and enforcement actions. EAA also states that under the proposal, pilots who lose their certificates on a cross-country flight would be unable to return home.

It is AOPA's position that, although proposed § 61.3 is a slight improvement over the existing regulation, the FAA should withdraw this requirement entirely. AOPA recommends that the FAA qualify the language in § 61.3 concerning ''required crewmember'' to state that the instructor may not act as a ''crewmember required under the aircraft's type certificate'' without a valid medical certificate. AOPA believes that this modification would permit a flight instructor to provide instrument instruction and act as a safety pilot under the regulations without a medical certificate.

One individual commenter agrees with the need for clarification, but states that the proposal still is ambiguous. He states that ''physical possession'' should be defined in § 61.1a or replaced with ''a valid airman certificate in the aircraft and readily accessible when exercising * * *''

FAA Response: The FAA is persuaded by the public comments that contend the proposed section could create difficulties in certain situations. As provided for in § 61.29, the FAA will permit a pilot to use a facsimile received from the FAA to satisfy the requirements of § 61.3(a). In response to AOPA's comment regarding instructors who act as safety pilots not being required to have a medical certificate, the FAA notes that § 91.109 specifies that a safety pilot is required to conduct simulated instrument flight, which makes the safety pilot a required crewmember. Therefore, an instructor in such situations would be required to hold a medical certificate. In addition, AOPA requests that safety pilots operating under § 91.109 be excepted from holding medical certificates. The FAA has decided not to address this request here, as it is beyond the scope of this rulemaking.

Section 61.3(b) Required pilot certificate for operating a foreign registered aircraft.

In Notice No. 95–11, the FAA proposed formatting and editorial changes to this paragraph. The rule change addresses the pilot certificate requirements for operating aircraft of foreign registry within the United States, and is adopted as proposed. No substantive comments were received.

Section 61.3(c) Medical certificate.

This section was clarified in Notice No. 95–11, and set forth the requirements for persons to have their medical certificate in their physical possession or readily accessible in the aircraft. It also specifically identified when it is permitted for persons not to have their medical certificate in their physical possession or readily accessible in the aircraft.

Comments: HAI suggests modifying proposed § 61.3(c)(1)(ii) to cover the accidental loss of a medical certificate. Similarly, GAMA suggests adding the language ''except for renewal or replacement'' to proposed § 61.3(c)(1)(ii).

Approximately 30 commenters address proposed medical certification requirements from the point of view of glider operations, nearly all of them in favor of Notice No. 95–11. Most commenters feel the proposal confirms that medical certificate requirements would continue not to apply to glider pilots, a policy they support. ASA, SSA, AOPA, and EAA support retaining medical self-evaluation for glider pilots. ASA states its opposition to the imposition of any standards for medical self-evaluation, while SSA opposes the listing of disqualifying conditions.

AOPA states that by not including powered gliders in proposed § 61.3(c)(2)(i), the FAA will be revoking the currently held privilege of operating powered gliders without a medical certificate. AOPA is unaware of any documented problem with medical incapacitation-related accidents for powered gliders that could justify implementation of a new medical certificate requirement for this group of airmen. NAFI also states that powered gliders should be included in this regulation.

FAA Response: The FAA has considered the public comments that indicate the proposed section could create difficulties for certificate holders who are awaiting the replacement of lost or destroyed certificates. Therefore, the phrase ''or other documentation acceptable to the Administrator'' has been added to the final rule. With regard to AOPA's concern over medical certificate requirements for pilots flying powered gliders, as explained in section IV,F, the FAA is not adopting the proposed separation of the glider category into powered and nonpowered classes.

However, for reasons discussed in section IV,A of this preamble, the final rule includes medical certificate requirements for recreational pilots, and student pilots seeking recreational pilot certificates.

Section 61.3(d) Flight instructor certificate.

In Notice No. 95–11, the FAA clarified the requirement that a flight instructor certificate must be in the person's ''personal possession'' whenever the person exercises the privileges of the certificate. This section also provided that a flight instructor certificate is not necessary if: (1) The training is given in accordance with a part 121 or part 135 air carrier approved training program; (2) the training is given by the holder of an ATP certificate under § 61.169 of this part; and (3) the person receiving the training and the person giving the training are employees of that air carrier. This proposal also provided that a flight instructor certificate is not necessary if the training is conducted in accordance with the provisions of § 61.41.

Comments: GAMA and AOPA are concerned that the proposal would present problems for flight instructors

participating in renewal programs that require instructors to turn in their CFI certificate when they mail in their course documentation. AOPA believes the proposed rule could ground these instructors while they await their certificates.

ATA states that the language in the NPRM preamble regarding proposed § 61.3 implies that a flight instructor certificate is not necessary if the training is in accordance with a part 121 air carrier approved training program, and the persons receiving and giving the training are employees of the air carrier. ATA notes that many part 121 air carriers provide training to other part 121 air carriers. The commenter recommends modifying the regulation to exclude the language ''person receiving the training'' and include a statement that would allow a part 121 air carrier with an approved training program to train another part 121 air carrier's pilots.

FAA Response: Based on public comments that argue the proposed section could create difficulties in situations where flight instructor certificates are mailed in upon completion of a renewal course, the FAA has decided to add the phrase ''or other documentation acceptable to the Administrator,'' which would permit a flight instructor to use a copy of a graduation certificate from a CFI refresher course and a copy of the completed application for renewal to meet this requirement. The FAA also agrees with ATA's comment, because the practice that ATA refers to is currently permitted, and the FAA did not intend to revoke it. Therefore, the FAA has changed the final rule to permit an air carrier conducting operations under part 121 or 135 with an approved training program to train another air carrier's pilots. Additionally, the FAA has added provisions stating that a flight instructor certificate is not necessary for certain training given by the holder of a commercial pilot certificate with a lighter-than-air rating, a person qualified in accordance with subpart C of part 142, a person as provided in § 61.41 of this part, and the holder of a ground instructor certificate.

Section 61.3(e) Instrument rating.

This section replaced the references to the instrument rating needed for each class of aircraft category with the phrase ''appropriate aircraft category, class, type, and instrument rating.'' Under the proposed rule change that established an instrument rating for airships, the existing requirement for a pilot to hold a commercial certificate with a lighter-than-air category and airship class rating to operate an airship under IFR or IMC was deleted. The proposal also required pilots of gliders to hold an instrument rating for a single-engine airplane. The FAA has decided to eliminate the proposed airship instrument rating proposed in § 61.3(k)(4). Instead, the FAA is retaining the current requirements for pilots to possess a lighter-than-air commercial pilot certificate with an airship rating to be permitted to fly airships under IFR, because the FAA concluded that operational requirements and accident/incident data did not establish a sufficient safety justification for increased regulatory or economic burdens resulting from the proposed change to the rule. This section is changed to reflect the elimination of the proposed separation of single- and multiengine instrument ratings, as well as the elimination of the powered glider class rating, as explained in section IV,D and section IV,F, respectively.

Section 61.3(f) Category II pilot authorization.

The proposed rule contained only editorial and format changes, and is adopted as proposed.

Section 61.3(g) Category III pilot authorization.

The provisions set forth in current § 61.5(i) as adopted in Amendment No. 61–100 have been retained with only minor editorial and format changes.

Section 61.3(h) Category A aircraft pilot authorization.

The proposed rule contained only editorial and format changes, and is adopted as proposed.

Section 61.3(i) Ground instructor certificate.

The FAA proposed to include the certification of ground instructor certificates and ratings in part 61, and replaced the phrase ''personal possession'' with ''physical possession, or immediately accessible when exercising the privileges'' of the ground instructor certificate. Except for a minor modification to clarify that a ground instructor can only provide endorsements for a knowledge test, the final rule is adopted as proposed.

Section 61.3(j) Age limitation.

Notice No. 95–11 proposed to align the age 60 rule for pilots with the requirements of part 121 for all U.S. and foreign pilots who are employed by foreign carriers that operate U.S.-registered civil aircraft. Section 121.383(c) provides that no certificate holder may use the services of, and no person may serve as, a pilot under part 121 if that person has reached his or her 60th birthday. That section, however, applies only to pilots serving with U.S. air carriers certificated under part 121. There are some U.S.-registered aircraft operated by non-U.S. air carriers. Under Annex 1 to the Convention on International Civil Aviation, the pilots of these aircraft must hold U.S. pilot certificates or a U.S. validation of their foreign pilot license. The special purpose pilot authorization under § 61.77 provides for validation of a foreign license and applies an age 60 limitation similar to that in part 121. However, there has not been an age 60 rule applied to the holders of regular U.S. pilot certificates while operating U.S.-registered aircraft for non-U.S. air carriers. This rule provides such a limitation.

In operations specifications issued under part 129, the FAA does require that foreign air carriers under part 129 apply to their pilots in command the age 60 limitation in Annex 1. This applies only to operations in the United States, however, and does not apply to seconds in command. It also applies to all airplanes operated by the foreign air carrier, not just U.S.-registered airplanes. Section 61.3(j) applies to all pilots, applies to certain operations both inside and outside the United States, and applies only to the operation of U.S.-registered airplanes.

Section 61.3(j) proposed to apply the age 60 rule to specific operations, including any scheduled international air services, nonscheduled international air transportation, or common carriage operations for compensation or hire in civil airplanes having a (1) passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or (2) payload capacity of more than 7,500 pounds. This was arrived at by merging the operations covered at that time by the part 121 age 60 rule, and those operations covered by the Annex 1 age 60 standard. Part 121 included scheduled and nonscheduled operations of civil airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, and all-cargo operations with airplanes having a payload capacity of more than 7,500 pounds. The Annex 1 standard covers aircraft engaged in scheduled international air services and nonscheduled international air transportation operations for remuneration or hire.

However, since Notice No. 95–11, the applicability of part 121 has been amended to include certain commuter

airplanes (60 FR 65832; December 20, 1995.) In order to align § 61.3(j) with part 121, as was proposed, this final rule applies to the following:

(i) Scheduled international air services carrying passengers in turbojet-powered airplanes;

(ii) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat;

(iii) Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passenger seats, excluding each crewmember seat; or

(iv) Scheduled international air services, or nonscheduled international air transportation for compensation or hire, in airplanes having a payload capacity of more than 7,500 pounds.

''International air service'' is defined as in Article 96 of the Convention of International Civil Aviation (Chicago Convention) as scheduled air service performed in airplanes for the public transport of passengers, mail, or cargo in which the service passes through the air space over the territory of more than one country. ''International air transportation'' is defined as air transportation performed in airplanes for the public transport of passengers, mail, or cargo in which the service passes through the air space over the territory of more than one country.

In the part 121 amendment, the FAA delayed the compliance date for pilots on operations that were not subject to an age limitation in the past but now are subject to the age 60 rule (see 60 FR 65843, as amended, 61 FR 2608; January 26, 1996). Because § 61.3(j) is a new age limitation, and does not just add additional operations to an existing age limit, the FAA is applying the same delayed implementation dates to all operations. However, until December 20, 1999, a person may serve as a pilot in operations covered by this paragraph after that person has reached his or her 60th birthday, if, on March 20, 1997, that person was employed as a pilot in operations covered by this paragraph.

While Notice No. 95–11 proposed to align the age 60 limitation in § 61.3(j) with that in part 121, at that time the changes to part 121 had not been made final, and Notice No. 95–11 did not specifically include the new part 121 airplanes. Accordingly, the FAA invites comments on the inclusion of additional airplane operations under § 61.3(j).

Comments: Five comments were received. One commenter supports clarifying the age 60 rule. Another commenter objects that the age 60 rule is an operational rule and should not appear in part 61 because it does not constitute a general aviation rule. Two commenters state that they believe the safety benefits of an age 60 limitation is not established, and three commenters note that the age 60 rule has been challenged in court.

FAA Response: The FAA has treated the age 60 rule in the past as both an operational rule (§ 121.383(c)) and a certification rule (§ 61.77). Annex 1 places the limitation in its certification standards. Part 61 contains not only general aviation rules, but also rules that apply to airline transport pilots and commercial pilots. The FAA has decided to include the age limitation in § 61.3(j) as a convenient location where affected persons may easily find it.

Recently the FAA reconsidered the age 60 rule and decided not to propose to change it (60 FR 65977; December 20, 1995). There is no reason to reexamine that decision at this time. While a petition for review of that decision has been filed in the United States Court of Appeals, there is no need to further delay implementation of age limitations.

Section 61.3(k) Special purpose pilot authorization.

The proposed rule required pilots who hold a special purpose pilot authorization issued in accordance with § 61.77 to have that authorization in their possession in the aircraft when exercising the privileges of that authorization. The rule is adopted as proposed. No substantive comments were received.

Section 61.3(l) Inspection of certificate.

This section, as proposed, permitted certain exceptions during the proposed 2-year transition period for the implementation of flight instructor certificates in the lighter-than-air category. Because those ratings have not been adopted in the final rule, proposed paragraph (k) has been withdrawn. Proposed paragraph (l) is adopted as proposed. No substantive comments were received.

Section 61.4 Approval of simulators and flight training devices.

Although this section was not proposed in Notice No. 95–11, it was set forth in Amendment No. 61–100. It is modified to refer to the approval of flight simulators and flight training devices. The current section has been revised to provide that any device used for flight training, testing, or checking that has been found to be acceptable to or approved by the Administrator prior to August 1, 1996, is considered to be a flight training device, provided it can be shown to function as originally designed and is used for the same purpose for which it was originally accepted or approved. The FAA notes that only devices that were accepted in accordance with AC No. 61–66, ''Annual Pilot in Command Proficiency Checks,'' may be used to satisfy the requirements of § 61.56. All other devices may be used only to the extent to which they had received acceptance or approval prior to August 1, 1996. This final rule also includes a provision stating that the Administrator may approve devices other than flight simulators or flight training devices for specific purposes.

Section 61.5 Certificates and ratings issued under this part.

The FAA proposed significant changes to this section. The FAA has decided to withdraw the conversion provisions proposed in paragraphs (e) through (h) from the final rule because the ratings proposed in those paragraphs were not adopted.

Section 61.5(a)

In Notice No. 95–11, the FAA proposed to include the ground instructor certificate in part 61. The specific provisions regulating the ground instructor certificates are discussed in the section-by-section analysis of §§ 61.211–61.217.

Section 61.5(b)

Section 61.5(b) proposed to establish a powered-lift category rating; an instrument rating for powered-lifts, nonpowered, and powered class ratings under the glider category; separate instrument ratings for single-engine and multiengine airplanes; and an instrument rating for airships. As discussed in section IV,D and section IV,F, the proposals for a powered-lift category rating and an instrument rating for powered-lift are adopted. As previously discussed in section IV,F, the FAA has decided to withdraw the proposals for separate ratings under the glider category, separate instrument ratings for single-engine and multiengine airplanes, and an instrument rating for airships.

In Notice No. 95–11, the FAA proposed to delete from this paragraph the word ''small'' in the reference to turbojet airplanes in the paragraph that applies to aircraft type ratings. The FAA also proposed to eliminate the reference to AC No. 61–1, ''Aircraft Type Ratings.'' The reference is obsolete because the AC has been revised. The list of type ratings is incorporated into AC No. 61–89D, ''Pilot Certificates:

Aircraft Type Ratings,'' which also consists of type-rating curricula. The FAA is adopting the proposed changes in the final rule.

The FAA proposed to delete from this paragraph the specific reference to type ratings in small helicopters for pilots with ATP certificates. The FAA is adopting this change in the final rule.

Section 61.5(c)

In Notice No. 95–11, the FAA proposed to establish the following ratings for flight instructor certificates: a powered-lift category rating, lighter-than-air category and class ratings, powered and nonpowered glider class ratings, and instrument ratings for airship, single-engine and multiengine airplanes, and powered-lift. For the reasons discussed in section IV,C and section IV,F, the lighter-than-air category and class ratings, and glider class ratings for the flight instructor certificate are withdrawn. For the reasons delineated in section IV,D, the separate instrument instructor ratings for airships and single-engine and multiengine airplanes also are withdrawn. The powered-lift category rating and instrument rating are adopted as proposed. The powered-lift category proposal is discussed in section IV,F.

Section 61.5(d)

Notice No. 95–11 revised ground instructor certificates to distinguish ratings on the basis of aircraft category (airplane, rotorcraft, glider, lighter-than-air, glider, and powered-lift).

Comments: AOPA opposes the change from the current ground instructor certificates (basic, advanced, and instrument) to the proposed ratings.

FAA Response: After further review, the FAA has decided to retain the current ground instructor ratings. The FAA found that operational requirements and accident/incident data do not establish sufficient safety justification for the increased regulatory and economic burden.

Section 61.7 Obsolete certificates and ratings.

In Notice No. 95–11, the FAA proposed to revise § 61.7 by adding a new paragraph (c) that would list five certificates and ratings that were proposed to be eliminated. However, the FAA has decided not to adopt separate classes of airplane instrument ratings, separate the glider category into a powered or nonpowered class rating, or establish new ground instructor ratings, because there is insufficient safety justification for the increased regulatory and economic burden. No substantive comments were received regarding this section, and except for the above changes, the final rule is adopted as proposed.

Section 61.9 [Reserved.]

In Notice No. 95–11, the FAA proposed that this section be titled ''Written syllabus for conducting training.'' The FAA also proposed to require that training under part 61 for any airman certificate be conducted according to a written syllabus. Under the proposal, instructors were responsible for ensuring that the syllabus contained all knowledge areas and areas of operation appropriate to the certificate and rating sought, and that the student completed all applicable lessons prior to receiving any endorsements. A copy of the syllabus was required to be furnished to the student, and an itemized written record of training also was required to be provided whenever a student completed the curriculum or terminated training.

Comments: NAFI recognizes the benefits of a written syllabus, but opposes the proposal because of the associated recordkeeping requirements and enforcement potential. NAFI states that the recordkeeping requirements are onerous, and the time limits for the retention of these records are not specified. According to NAFI, the proposal would make instructors liable for enforcement action and litigation in the event a training syllabus is lost. NAFI believes that the PTS is a sufficient guide to ensure coverage of training requirements.

NATA states that the proposed written syllabus requirement is a good concept, but the commenter also opposes the proposal because of the recordkeeping requirements. NATA recommends that the references in proposed § 61.9(a) (1) and (2) to providing total training or lesson time schedules to a student pilot be omitted in order to lessen the pressures on students and instructors to complete training within a time frame. To ensure the use of a written syllabus, NATA proposes that student pilots be required to submit the written syllabus to the designated examiner during the practical test.

AOPA agrees in principle that most flight training should be organized into a format that ensures each student is taught the necessary aeronautical skills. The commenter, however, opposes the proposed written syllabus requirement and the associated recordkeeping and transfer requirements. According to AOPA, the FAA does not provide any justification for the burdens of the proposal. The commenter is also concerned about the liability implications of proposed §§ 61.9(a)(1) and 61.9(c) for flight instructors. According to AOPA, the proposals may create a de facto contractual relationship between the instructor and the student to provide flight or ground instruction in a specific amount of time. AOPA points out that each student is different, and these differences may not be apparent at the beginning of a syllabus curriculum. The commenter believes that it would be better to provide the prospective student with a copy of the PTS for the certificate or rating sought and to familiarize the student with the standards to which he or she will be expected to perform.

AOPA also opposes the recordkeeping requirements of this provision. The commenter states that proposed § 61.9(f) creates strict liability compliance on the part of the instructor by requiring the instructor to provide the student with an itemized written record of the training accomplished when the student decides to terminate training. AOPA notes that the student is not obligated to give notice of his or her decision to terminate training to the instructor. AOPA believes that the current required logbook entries are sufficient documentation and that no further regulation is necessary. According to the commenter, the recordkeeping requirements also represent a significant addition of time and costs to training without any increase in safety.

HAI comments that the proposed written syllabus requirement is a good concept, but that it will create difficulties for both flight instructors and flight schools because of the training time constraints and recordkeeping requirements, especially because there are many part-time and occasional students with special requirements. HAI recommends deleting any references to the instructor providing total training or lesson time to a student pilot.

SSA opposes the proposed written syllabus requirement in its current form. SSA contends that glider instruction is unique in that it is virtually impossible to follow a written syllabus. Glider instructors cannot predict the training time of each flight, the length of total training time, the maneuvers and procedures that will maximize each training session, or the knowledge areas that will be covered on each flight because of weather constraints and scheduling realities. SSA also states that glider school operators feel it is unreasonable to present students with a complete package prior to beginning training because many students do not progress past the first flight.

GAMA supports requiring flight instructors to use a written syllabus for pilot training. GAMA comments that, while the recordkeeping requirements may appear somewhat burdensome, the benefits to safety outweigh the administrative burden. According to GAMA, a written syllabus would improve communication between the student and instructor, and it would contribute to a higher quality of training. The commenter also believes that the syllabus could prove useful to accident investigators and other safety personnel in understanding a pilot's training background. GAMA notes, however, that the training records should not be used for enforcement purposes.

Several individual commenters also cite concerns about burdensome recordkeeping, and one states that the PTS are sufficient to follow. One commenter suggests that the FAA publish an AC on the issue rather than adopting a regulation. One commenter states that the proposed requirement for the syllabus to contain planned training times for lessons are impossible to determine for all students; another adds that specifying planned training times could be misconstrued as a written contract. Comments supporting the proposal state it would cut down on unprepared instructors and would promote an organized, logical approach toward meeting certification and rating requirements. One commenter supports the proposal for use of a written syllabus, but opposes the associated recordkeeping requirements as unnecessarily burdensome. On a related issue, another commenter stated that the current requirement for flight instructors to retain records for 3 years is unnecessary.

FAA Response: After further review of the proposal, the FAA has concluded that operational requirements and the accident/incident data do not establish a sufficient safety justification for the increased regulatory and economic burden resulting from the proposed rule. Therefore, the proposal has been withdrawn.

Section 61.11 Expired pilot certificates and reissuance.

Minor editorial and format changes were proposed for this section. No substantive comments were received, and the final rule is adopted is proposed.

Section 61.13 Issuance of airmen certificates, ratings, and authorizations.

In Notice No. 95–11, the FAA proposed to replace the title of § 61.13, ''Application and qualification,'' with ''Awarding of airman certificates, ratings, and authorizations,'' and to revise the format of this section.

The significant proposed changes in this section were as follows: (1) Replacement of the phrase ''flight proficiency requirements'' with ''approved areas of operation''; (2) deletion from this section of the rule's provision that permits the use of aircraft for a practical test that cannot perform all of the approved areas of operation for that practical test because of limitations listed in that aircraft's type certificate; and (3) clarification that a limitation placed on a person's airman certificate may be removed if the pilot demonstrates to an examiner satisfactory proficiency in the area of operation for which the airman certificate and rating are sought.

For reasons of clarity, the final rule changes the proposed section title word ''awarding'' to ''issuance''. Except for these and other editing changes applicable to Category III operations and the use of approved flight simulators and approved flight training devices, the final rule is adopted as proposed. No substantive comments were received.

Section 61.14 Refusal to submit to a drug test.

In Notice No. 95–11, the FAA inadvertently set forth the pre-March 1994 regulatory language contained in § 61.14.

Comments: In its comments, AOPA opposes proposed § 61.14(b) because it seems to allow certificate action against any person who refuses to take a drug or alcohol test, regardless of whether the person is required under the rule to take a test. While AOPA believes that the intent of this rule is obvious, it is uncomfortable with the removal of the qualifying language and recommends retaining the current language. NAFI also comments about this proposed section, and states that courts have made determinations equating an adulterated test sample with refusal to take a test. NAFI is concerned that, because test samples might be adulterated in many ways other than by the person taking the test, the wording of the regulation might place pilots at risk of a violation and certificate revocation ''for reasons beyond their control.''

FAA Response: As previously noted, no modifications were intended for § 61.14. The final rule sets forth the existing regulation in its correct form.

Section 61.15 Offenses involving alcohol or drugs.

No modifications were proposed for this section.

Section 61.16 Refusal to submit to an alcohol test or to furnish test results.

In Notice No. 95–11, the FAA proposed an editorial change to correct the reference to § 91.11(c) in the existing rule to § 91.17(c). The final rule is adopted as proposed.

Section 61.17 Temporary certificate.

In the preamble to Notice No. 95–11, the FAA proposed to revise this section to include the ground instructor certificate. Although the actual revision to the rule language was omitted inadvertently from the proposed rule, the final rule includes the appropriate references to the ground instructor certificate. The proposed rule also made some minor editorial changes. No substantive comments were received on this proposal, and it is adopted as proposed.

Section 61.19 Duration of pilot and instructor certificates.

In Notice No. 95–11, the significant proposed changes in this section were: a change in the title of proposed § 61.19 from ''Duration of pilot and flight instructor certificates'' to ''Duration of pilot and instructor certificates''; deletion of the existing rule's language specifying that a flight instructor certificate is only effective when accompanied by a medical certificate appropriate to the privileges being exercised; inclusion of ground instructor certificates under part 61; and the addition of the language ''or otherwise terminated'' to the list of conditions under which a certificate may be terminated.

Comments: AOPA supports the inclusion of ground instructor certificates without a specific expiration date, but objects to, and requests the deletion of, the language ''or otherwise terminated'' in proposed § 61.19(f). AOPA states that the law provides protective procedures in the event of suspension or revocation, and the commenter is unaware of any method of certificate termination other than the methods specified in the existing rule. Individual commenters also express concern about the addition of the new language.

FAA Response: After further review and in response to the objections of AOPA and some individual commenters, the final rule deletes the proposed language ''or otherwise terminated.'' Except for this change, the final rule is adopted as proposed.

Section 61.21 Duration of a Category II and a Category III pilot authorization (for other than part 121 and part 135 use).

The FAA proposed minor editorial and format changes to § 61.21. No substantive comments were received, and, except for editorial changes to include references to Category III operations, the final rule is adopted as proposed.

Section 61.23 Medical Certificates: Requirement and duration.

The FAA proposed to change the title of this section from ''Duration of medical certificates'' to ''Duration and requirement for a medical certificate'', and to redesignate the paragraphs within it.

Proposed paragraph (a) set forth the duration of each class of medical certificate, and proposed paragraph (b) set forth the medical certificate requirements for each type of pilot operation. Proposed paragraph (b)(3)(iii) clarified the existing requirement that a person who is exercising the privileges of his or her flight instructor certificate while serving as a pilot in command, or as a required crewmember, must hold a third-class medical certificate. However, if the flight instructor is not serving as pilot in command or as a required crewmember, then that person would not be required to hold a medical certificate. The FAA proposed in paragraphs (b)(4)(i) and (b)(4)(ii) to permit student pilots who are seeking a recreational pilot certificate and certificated recreational pilots to operate on aircraft without holding a medical certificate, provided they have an application for an airman certificate on file with the FAA that certifies they do not have any known medical deficiencies that would make them unable to pilot the aircraft. The proposal also afforded higher-certificated pilots exercising the privileges of a recreational pilot certificate these same privileges.

The FAA also proposed editorial and format changes to the paragraph concerning the duration of medical certificates.

Comments: NAFI supports the proposal to permit flight instructors to teach with only a third-class medical certificate. NAFI and AOPA express support for permitting flight instructors to teach without a medical certificate if the instructor is not acting as a required crewmember or pilot in command. AOPA, however, believes there is a discrepancy that is potentially unfair. The commenter points out that § 91.109 requires a safety pilot any time a civil aircraft is operated in simulated instrument flight, and, under these circumstances, AOPA contends that the safety pilot becomes a required crewmember. According to AOPA, an instructor becomes a required crewmember as soon as a pilot receiving instruction puts on a hood or other vision-limiting device. Therefore, AOPA reasons that a flight instructor who does not possess a medical certificate cannot give any form of instruction involving flight by reference to instruments under simulated instrument conditions. The commenter recommends permitting an instructor to act as a safety pilot without a medical certificate.

GAMA, NATA, HAI, and AOPA oppose the language of proposed § 61.23 concerning the duration of the different classes of medical certificates, and recommend retaining the current language of the regulation. NATA believes the proposed language is unclear and could lead to misinterpretations. Other individual commenters have echoed this position and state that, under the proposed language, it appears that if a pilot's first-class medical certificate expires, the pilot will not be able to exercise the privileges of pilot certificates requiring second-class and third-class medical certificates.

FAA Response: In the final rule, the title was changed to ''Medical Certificates: Requirement and duration,'' and the section was further reformatted and edited. The FAA reviewed AOPA's concerns regarding the ability of flight instructors to act as safety pilots without medical certificates. The FAA has determined that safety requires all required crewmembers, including safety pilots, to possess valid medical certificates.

The FAA agrees with the concerns of GAMA, NATA, HAI, and AOPA regarding problems in the proposed language for the duration of medical certificates and has modified the final rule to restore the provisions of the existing rule. The FAA has also retained its proposal to require that an applicant for a private, commercial, or ATP certificate possess only a third-class medical certificate; but after further review, has determined that the medical certificate requirements that were proposed to be contained in the eligibility requirements listed under each pilot certificate subpart should be placed in § 61.23. The purpose of this change is to reflect the FAA's position that a medical certificate applies to the type of pilot operation being conducted.

Most commenters support the FAA's proposal, which provides that applicants would only need a third-class medical certificate to be eligible to apply for a private, commercial, airline transport pilot, or flight instructor certificate. This change also was made in § 61.39, but is discussed here. These commenters feel that the proposal would encourage pilots to seek advanced training, even if they did not intend to exercise the privileges of the higher certificate. AOPA, GAMA, and NAFI support permitting applicants for a commercial or ATP certificate to hold only a third-class medical certificate. Like the other commenters, these associations felt that the proposal would encourage training toward advanced certificates and would improve safety.

With respect to the holding of medical certificates by a flight instructor, the FAA has determined that the compensation a certificated flight instructor receives for flight instruction is not compensation for piloting the aircraft, but rather is compensation for the instruction. A certificated flight instructor who is acting as pilot in command or as a required flight crewmember and is receiving compensation for his or her flight instruction is only exercising the privileges of a private pilot. A certificated flight instructor who is acting as pilot in command or as a required flight crewmember and receiving compensation for his or her flight instruction is not carrying passengers or property for compensation or hire, nor is he or she, for compensation or hire, acting as pilot in command of an aircraft. Therefore, because a certificated flight instructor who is acting as pilot in command or as a required flight crewmember and is receiving compensation for his or her flight instruction is exercising the privileges of a private pilot, he or she only needs to hold a third-class medical certificate. In this same regard, the FAA has determined that a certificated flight instructor on board an aircraft for the purpose of providing flight instruction, who does not act as pilot in command or function as a required flight crewmember, is not performing or exercising pilot privileges that would require him or her to possess a valid medical certificate under the FARs.

The changes implemented by the FAA still require a person who is involved in pilot operations requiring an ATP certificate (i.e., part 121 air carrier operations) to hold a first-class medical certificate. In addition, a person who is involved in pilot operations requiring a commercial pilot certificate (i.e., part 135 on-demand operators) will be required to hold a second-class medical certificate.

For reasons discussed in section IV,A of this preamble, the final rule retains the requirement that any pilot exercising the privileges of a recreational pilot certificate possess a third-class medical certificate.

As a result of a legal interpretation that permits applicants and check airmen, under parts 121 and 135, to perform the practical tests for a type rating in a flight simulator without either person holding a medical certificate, the FAA has modified § 61.23 to permit applicants, examiners, and check airmen to perform a practical test or check without being required to hold a medical certificate, provided that the test or check is only being conducted in a flight simulator or a flight training device.

Section 61.25 Change of name.

In Notice No. 95–11, minor format and editorial changes were proposed. No substantive comments were received. Except for a minor editorial correction, the final rule was adopted as proposed.

Section 61.27 Voluntary surrender or exchange of certificates.

The FAA proposed to revise the format of this section. No substantive comments were received on this proposal, and it is adopted as proposed.

Section 61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.

In Notice No. 95–11, the FAA proposed to revise the title of this section and delete some language concerning the procedures for replacing lost or destroyed airman or medical certificates.

Section 61.29 (a), (b), and (c)

The FAA proposed to delete the stated fee for replacement of a lost or destroyed airman or medical certificate. The proposal also established the procedures for obtaining copies of lost or destroyed airman and medical certificates and knowledge test reports.

Comments: EAA and NAFI disagree with proposed § 61.29 because it does not state what the fee is for replacement of a lost certificate. EAA believes that requiring an airman to call the Airman Certification Branch for fee information is unreasonable. These commenters also are concerned that the fee could be raised without sufficient public oversight. AOPA also opposes the deletion of the fee information and states that the rule contains no reference to where fee information can be found. The commenter contends that it is impractical to use the mail for the urgent replacement of an airman certificate.

FAA Response: The cost for replacement of a lost or destroyed airman certificate, medical certificate, or knowledge test report is contained in 14 CFR part 187. In response to commenters' concerns, the FAA notes that any changes to part 187 would be subject to public comment. The FAA will accept a facsimile of the letter requesting replacement of these certificates or reports in urgent cases.

Section 61.29(d)

In the final rule, paragraph (d)(2) has been revised to incorporate current policy, which is not to accept a post office box as part of a permanent mailing address. Minor editorial changes were also made in the final rule.

Section 61.29(e)

Proposed paragraph (e) provided that a person who has lost an airman certificate, medical certificate, or knowledge test report may obtain a facsimile from the FAA confirming it was issued. No changes were made to this paragraph in the final rule.

Section 61.31 Type rating requirements, additional training, and authorization requirements.

The FAA proposed several new or revised training and instructor endorsement requirements, and deleted the provision requiring a type rating in helicopters for operations requiring an ATP certificate. The proposed requirements included changes in endorsement requirements, special aircraft training, aircraft type specific training, and flight instructor endorsements for any aircraft specified by the Administrator.

Comments: Approximately 55 comments address issues of endorsements, about 44 percent of which oppose the proposals, 37 percent agree, and 19 percent offer alternatives. An individual commenter also suggests an additional requirement for an airplane pilot to have training and a flight instructor endorsement to serve as pilot in command in an amphibious airplane.

FAA Response: The FAA has made various clarifying changes to these sections and modified terminology because of changes implemented elsewhere in the rule. The commenter's proposal for an additional requirement for amphibious airplane pilots is outside the scope of Notice No. 95–11 and cannot be included in the rule without comment under the standard regulatory process. In addition, the FAA has added a paragraph describing additional training required for operating a glider. The reasons for this action are discussed in section IV, F.

Section 61.31(a) Type ratings required.

This paragraph listed those aircraft for which a type rating is required and is adopted without change. No substantive comments were received.

Section 61.31(b) Authorization in lieu of a type rating.

This paragraph listed the circumstances under which a pilot may be authorized to operate, for up to 60 days, an aircraft without holding the appropriate type rating. The provisions are adopted without change. No substantive comments were received.

Section 61.31(c) Aircraft category, class, and type ratings: Limitations on the carriage of persons or operating for compensation or hire.

This paragraph provided limitations on the carriage of persons for compensation or hire. The provisions are adopted without change. No substantive comments were received.

Section 61.31(d) Aircraft category, class, and type ratings: Limitations on operating an aircraft as the pilot in command.

This paragraph provided limitations on operating an aircraft as the pilot in command.

Comments: AOPA opposes the language in proposed § 61.31(d)(1), which states that a pilot must be ''enrolled in a course of training'' for a certificate or rating and be under the supervision and endorsement of a flight instructor in order to operate, as pilot in command, an aircraft for which the person does not hold category and class privileges on his or her certificate. AOPA believes that the use of the language ''enrolled in a course of training implies that only a part 141 or 142 school would be able to provide this authorization.'' AOPA recommends replacing this language with words that recognize that the airman is ''receiving training'' toward a certificate or rating. An individual commenter also questions how a person would enroll in a course of training not associated with part 141, as described in proposed § 61.31(d)(1). NAFI also makes the same point and proposes that proposed § 61.31(d)(1) be changed to read ''Be under the supervision of a certified flight instructor.''

FAA Response: After considering AOPA's and NAFI's comments, the FAA has decided to change the references from ''enrolled in a course of training''

to ''receiving training'', which is more generic and avoids the implication that a pilot must receive training in an FAA-certificated school.

Section 61.31(e) Exceptions.

This paragraph was modified because there is no longer a separation of powered and nonpowered glider class certificates as in the proposed rule, for the reasons stated in section IV, F. Therefore, gliders were added to the list of aircraft that do not require class ratings. Minor editorial changes were also made to this paragraph in the final rule.

Section 61.31 (f) and (g) Additional training for operating complex airplanes, and additional training for operating high-performance airplanes.

The FAA proposed to separate endorsements for high performance and complex aircraft. Proposed § 61.31(g) replaced the current requirement for a pilot to receive training and an endorsement in an airplane with ''more than 200 horsepower'' to ''200 horsepower or more''.

Comments: Some commenters object to the proposal in § 61.31 that would separate the endorsements for the operation of airplanes with retractable landing gear, flaps, and a controllable propeller, and airplanes with engines of 200 horsepower or more, and state that pilots with the current endorsement should be covered by a ''grandfather'' clause.

NATA and GAMA support the proposed separation of endorsements for complex and high-performance aircraft but oppose the proposed definition of ''high performance.'' EAA and NAFI also object to the proposed definition of ''high performance'' and state that the inclusion of aircraft with 200 horsepower engines will add considerable cost for thousands of aircraft owners. These commenters contend that there is no safety evidence to support the proposed definition. Some individual commenters also suggest maintaining the regulatory reference to engines of more than 200 horsepower.

In its comment, AOPA states that the FAA has offered no justification for the separate endorsements for complex and high-performance aircraft, and the commenter is unaware of any serious accident history to support the proposal. According to AOPA, the aircraft insurance industry has effectively regulated this area by requiring training and instruction far in excess of that proposed by the FAA. AOPA also objects to the inclusion of aircraft with 200 horsepower engines in the definition of high performance.

FAA Response: The FAA believes the operating characteristics of complex aircraft and high-performance aircraft are so different as to justify separate endorsements. There are now turbine-powered aircraft that are high-performance aircraft but that are not considered complex aircraft. Also, training in one type of aircraft does not necessarily transfer to training in another type of aircraft. However, the FAA finds persuasive the commenters'' objections to the proposed change in the requirement of ''200 horsepower or more.'' Therefore, the rule will only require a separate endorsement for airplanes with ''more than 200 horsepower.''

Section 61.31(h) Additional training required for operating pressurized aircraft capable of operating at high altitudes.

The FAA proposed to require pilots to receive additional training for operating ''pressurized aircraft'' because current provisions only require pilots to receive additional training in ''pressurized airplanes.'' This proposal captures the possible development of pressurized aircraft that are not airplanes and may be manufactured in the future.

Comments: AsMA urges an adoption of a broader view of what encompasses human factors, and suggests specific areas to include in such training. AsMA recommends that instructor pilots be required to attend special human factors seminars and that the FAA evaluate these new training efforts. The commenter also states that § 61.31(f)(1)(i) is too limited in scope because it requires only those pilots flying a pressurized airplane that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL to complete aviation physiology training. AsMA contends that the physiological stresses of flight can occur at lower altitudes, and other environmental and operational stresses can cause problems while flying at any altitude. According to the commenter, proposed § 61.31(h)(1) (ii) through (vii) perpetuates these shortcomings and takes an additional step in the wrong direction by eliminating the last sentence (''and any other physiological aspects of high-altitude flight'') from the existing rule. AsMA recommends modifying existing § 61.31(f) to mandate that all U.S. civil aviation pilots be required to complete ground training on basic aviation physiology.

GAMA supports requiring one-time, high-altitude physiology and emergency procedures training for a pilot in command of any aircraft capable of operating above 25,000 MSL. According to GAMA, this training has already been incorporated into many training courses, therefore making it a formal requirement that should not impose an undue burden. GAMA, however, recommends that the grandfather clause exempting pilots who have flown as pilot in command in a pressurized aircraft be extended to the date of final rulemaking instead of April 15, 1991, as proposed.

FAA Response: After considering AsMA's comments, the FAA has retained the phrase ''and any other physiological aspects of high altitude flight'' in the final rule. However, GAMA's comment addresses a clause that was not modified in Notice No. 95–11 and is beyond the scope of this rulemaking. The proposal is adopted as modified.

Section 61.31(i) Additional training required by the aircraft's type certificate.

The proposed paragraph required additional training and a flight instructor endorsement for a person to serve as pilot in command of an aircraft that the Administrator has determined requires type specific training.

Comments: EAA and NAFI oppose the proposed requirement for type-specific training because the FAA has the ability to require additional training for a specific aircraft when the type certificate for that aircraft is issued. EAA states that training in aircraft that have been in use for many years should not be required.

AOPA also objects to the type-specific training requirement on the grounds that the proposal grants the Administrator blanket authority to require this additional training and would permit the FAA to permanently regulate airman certification by policy without the benefit of public comment.

GAMA states that the proposed requirement for type-specific training will require an appropriate level of training, determined on a model-by-model basis, and will significantly improve safety. The commenter contends that a number of unfortunate incidents and accidents have been caused by the pilot's lack of type-specific training in an aircraft that is more ''advanced'' than the pilot has previously flown. GAMA states that the aircraft may not be so different that a type rating is needed, yet a high-performance/complex endorsement may be grossly inadequate, especially as new aircraft designs are introduced.

A representative of the Texas Department of Aviation supports the proposal in § 61.31(i) for type-specific

training, but requests additional details as to how such aircraft would be identified, how the additional training ''would be treated,'' and who would be qualified to give such training.

Several individual commenters also oppose the type-specific training proposal; two commenters state that the provision is vague and vests too much discretion with the Administrator.

FAA Response: It is the FAA's position that granting the Administrator the authority to require type-specific training, on any aircraft that the Administrator deems appropriate, provides the Administrator with the minimum means necessary to rapidly address safety concerns without the delay incurred by rulemaking. The intent of the rule is for the Administrator to only exercise this power in limited circumstances. Flight characteristics of certain aircraft may necessitate the rapid implementation of additional training. Recent Piper Malibu and Robinson R–22 accidents demonstrate the need for this requirement. When the Flight Standards Board (FSB) meets, a notice to the public is published in the **Federal Register**, and the opportunity for public comment is provided. The FAA believes that this will permit the FAA to be more responsive to patterns of accidents in the future, and the proposal is adopted with minor editorial changes.

Section 61.31(j) Additional training required for operating tailwheel airplanes.

This paragraph listed the additional training required for operating tailwheel airplanes. The proposed rule contained formatting changes and has been adopted with only minor editorial changes. No substantive comments were received.

Section 61.31(k) Additional training required for operating a glider.

The FAA has added this paragraph because the proposal to separate the glider category into powered and nonpowered class ratings as proposed in Notice No. 95–11 has been withdrawn, and additional endorsements required for flying gliders have been adopted instead. The reasons for this action are discussed in section IV, F.

Section 61.33 Tests: General procedure.

In Notice No. 95–11, a minor editorial change was proposed to language of this section.

Comments: AOPA objects to the proposed § 61.33 provision that the Administrator shall designate the time, location, and examiner for conducting tests. AOPA believes that this subtle language change implies that the FAA is going to assign applicants for knowledge and practical tests to a specific examiner. AOPA recommends retention of the current language even if this is not the intent of the change because the new language is subject to this interpretation. HAI and individual commenters echo AOPA's concerns.

FAA Response: The proposed change replaced the phrase ''persons, designated by the Administrator'' with the word ''examiners.'' FAA notes the commenters'' concerns and has retained the existing rule's language in the final rule.

Section 61.35 Knowledge test: Prerequisites and passing grades.

In Notice No. 95–11, § 61.35 was retitled to read ''Knowledge test: Prerequisites and passing grades,'' instead of ''Written test prerequisites and passing grades.'' The FAA proposed that the term ''written test'' be replaced with ''knowledge test'' to reflect computer testing and to be consistent with FAA policy, as discussed in the analysis of § 61.1(b)(11).

Proposed paragraph (a)(1) set forth a requirement that an applicant receive an endorsement certifying the completion of ground training or a home study course on the aeronautical knowledge requirements for each certificate or rating, and that the applicant is prepared for the knowledge test. An applicant would no longer be able to present evidence of completion of a home study course for review by an FAA Flight Standards District Office (FSDO) as a basis of eligibility to take the knowledge test. This practice is a role more properly filled by ground or flight instructors. Home study would continue to be acceptable; however, the instructor rather than the FSDO would review completion of the home study course.

In proposed paragraph (a)(2), the current requirements for the presentation of personal identification found in FAA Order 8700.1, ''General Aviation Operations Inspector's Handbook,'' were included and clarified. These identification procedures were established in response to the Drug Enforcement Assistance Act of 1988 (Pub. L. 100–690, November 18, 1988). The proposal required an applicant to present identification consisting of the applicant's photograph, signature, and date of birth showing that the applicant meets or will meet the age requirements for the certificate sought before the expiration date of the knowledge test report. The proposal would also require an applicant to present identification containing his or her actual residential address, if different from the applicant's mailing address. Acceptable types of identification include, but are not limited to, a driver's license, a government identification card, a passport, or other forms of identification that meet these personal identification criteria. The photograph of the applicant would be reproduced on the airman identity card portion of the airman certificate.

The FAA also proposed that applications for ATP certificates and ratings be included in § 61.35. In the existing rule, § 61.35 did not apply to the written test for an ATP certificate or a rating associated with that certificate. The passing requirements for a written test for an ATP certificate or a rating associated with that certificate were found in the existing § 61.167. Existing § 61.167 stated that an applicant for an ATP certificate or rating must pass the test with a 70 percent minimum passing grade.

Comments: NAFI, NATA, and AOPA oppose the proposal to require that an applicant receive an endorsement from an instructor certifying that the applicant is prepared for the knowledge test. The commenters state that the fee is sufficient incentive for a student to prepare for the test. HAI also objects to this requirement and notes that students commencing ground school before their flight training may not yet have logbooks, or might lose their logbooks and then be unable to find the instructor who provided the endorsement. NATA contends that computer testing has lifted the administrative burden of test scoring from the FAA. AOPA also opposes the proposal to remove the minimum passing grade for a knowledge test from the regulations. AOPA believes that this information should be a matter of public record. The commenter is concerned that the FAA could revise the passing grade requirements without issuing an NPRM and soliciting public comment.

GAMA states that the FAA should eliminate the requirement for an endorsement to take a knowledge test. According to GAMA, the FAA's proposal fails to consider the high quality of training materials offered today, most of which provide a means for the home study applicant to complete practice tests at home before taking the FAA knowledge test. In spite of this, GAMA feels that an instructor may feel reluctant to provide an applicant with an endorsement based on a one-time meeting. GAMA contends that if home study is permitted, an applicant should be allowed to test

when he or she feels ready. The commenter believes that the testing fee will act as the deterrent to premature testing.

One individual commenter who agrees with the proposal to require an instructor endorsement for the knowledge test suggests that § 61.35 state that the instructor must certify that the student is competent to take the test, so that the instructor can charge for the service. Another commenter opposes this proposal.

FAA Response: In the general discussion of the preamble, the FAA inadvertently stated that a ''logbook'' endorsement was required for a knowledge test. The rule, however, did not include this provision and it was not the FAA's intent to require a ''logbook'' endorsement. The FAA notes the commenters' objections to the requirement for an endorsement as a prerequisite to the knowledge test. However, the current rule requires an applicant to show satisfactory completion of the required ground instructor or home study course. This is accomplished through the use of an endorsement. The FAA has repeatedly held that this requirement is necessary to ensure a high quality of training, and the final rule is adopted as proposed with minor editorial changes.

Section 61.37 Knowledge tests: Cheating or other unauthorized conduct.

In Notice No. 95–11, the FAA proposed that the phrase ''Except as authorized by the Administrator'' be deleted from this section. Current paragraph (a)(4) was inadvertently deleted from the proposed rule and has been included in the final rule. Minor editing and formatting changes were also proposed. No substantive comments were received, and the final rule is adopted as proposed.

Section 61.39 Prerequisites for practical tests.

In proposed § 61.39, the FAA replaced the words ''flight test'' and ''oral test'' with the words ''practical test''. The words ''written test'' were replaced with ''knowledge test''. These proposed changes were consistent with the changes discussed in § 61.1, ''Applicability and Definitions.'' The FAA also proposed to clarify the eligibility prerequisites for practical tests.

Section 61.39(a)

The FAA proposed to permit an applicant to hold at least a third-class medical certificate to be eligible for a practical test and to clarify the age requirement for an applicant for an ATP certificate. The proposal also included the current prerequisites for practical test procedures found in FAA Order 8700.1. Comments relating to the third-class medical certificate requirement are addressed in the discussion of § 61.23. The FAA made minor editorial changes to the final rule to reflect the use of the term ''authorized instructor.''

Section 61.39 (b) and (c)

Proposed paragraphs (b) and (c) revised and clarified the current eligibility provisions for applicants for ATP certificates and ratings. Minor editorial changes were incorporated into this paragraph of the final rule.

No substantive comments, other than those addressing the third-class medical certificate requirement, were received, and the proposal is adopted with minor editorial changes.

Section 61.39 (d) and (e).

Although not proposed in Notice No. 95–11, paragraphs (d) and (e) include provisions relating to the completion of all increments of the practical test that were adopted in Amendment No. 61–100.

Section 61.41 Flight training received from flight instructors not certificated by the FAA.

The FAA proposed minor editorial changes to this section. The proposal replaced the word ''instruction'' with the word ''training,'' and, in proposed paragraph (a), clarified that training received from a flight instructor of an Armed Force must have been obtained in a program for training military pilots. In proposed paragraph (b), the FAA clarified that flight instructors not certificated by the FAA are only authorized to give endorsements to show training given, but may not give any of the endorsements required under part 61 to take a written or practical test for a pilot certificate or rating, or for the exercise of a certificate privilege. No substantive comments were received, and apart from minor editing changes, the final rule was adopted as proposed.

Section 61.43 Practical tests: General procedures.

In Notice No. 95–11, the FAA proposed to replace the term ''flight test'' with ''practical test'', and the phrase ''maneuvers and procedures'' was replaced with ''approved areas of operation''. Applicants for ATP certificates or ratings were to be included in the rule by replacement of the phrase ''an applicant for a private or commercial pilot certificate, or for an aircraft or instrument rating on that certificate'' with ''an applicant for a certificate or rating, issued under this part.'' Additional changes were made to the language in order to clarify and simplify the section.

In proposed § 61.43(a), an applicant for a practical test was required to: perform the approved areas of operation for the certificate or rating sought within the approved standards; demonstrate mastery of the aircraft with the successful outcome of each task performed never seriously in doubt; demonstrate satisfactory proficiency and competency; demonstrate sound judgment; and demonstrate single-pilot competence if the aircraft is type certificated for single-pilot operations.

With regard to the demonstration of single-pilot competence listed in proposed paragraph (a)(5), most aircraft that are type certificated for one pilot are currently operated by one pilot. However, some aircraft (e.g., the Cessna Citation 501 and 551) are type certificated for one pilot, but are operated by either one- or two-pilot crews. The FAA realized that some pilots may desire to operate an aircraft type certificated for one pilot with a two-pilot crew. In this situation, the applicant would have the option, contained in proposed paragraph (b), not to demonstrate single-pilot competence, but a limitation would be placed on the applicant's airman certificate that states a second in command is required. This limitation could later be removed if the pilot demonstrates single-pilot competence. This proposal was consistent with FAA Order 8700.1 regarding aircraft that are type certificated for one pilot, but operated with one- and two-pilot crews. The proposal did not change regulations for applicants that apply for a certificate or rating in aircraft that are usually operated by one pilot. These applicants currently are required to demonstrate single-pilot competence during the practical test.

In paragraph (e), the proposal codified the procedures, which are currently found in FAA Order 8700.1, that address those situations under which an examiner or applicant may discontinue the practical test due to inclement weather conditions, aircraft airworthiness, or other flight safety concerns.

Comments: AOPA supports proposed § 61.43(f)(1) permitting applicants whose first test was discontinued for any reason to credit those areas of operation that were performed satisfactorily to a rescheduled test if the remainder of the practical test is performed within 60 days.

FAA Response: The FAA notes AOPA's comment of support. Except for

minor editing changes, the final rule is adopted as proposed.

Section 61.45 Practical tests: Required aircraft and equipment.

In Notice No. 95–11, the FAA proposed that § 61.45 be retitled to read ''Practical tests: Required aircraft and equipment'' instead of ''Flight tests: Required aircraft and equipment''. The FAA also proposed to revise this section by replacing the term ''flight test'' with ''practical test'' and ''flight proficiency requirements'' with ''approved areas of operation''.

Proposed paragraph (a)(1) permitted the use of aircraft with a primary airworthiness certificate to be used for a flight test. This proposal corrects an oversight that occurred during the issuance of the Primary Aircraft Final Rule (57 FR 41360; September 9, 1992). In the ''Supplementary Information'' section (in the paragraphs entitled ''Rental and Flight Instruction'' and ''Pilot Certification'') of that final rule, the FAA stated that the use of primary aircraft are permitted to be used for rental, flight instruction, and pilot certification. However, the FAA did not provide for their use in that rule.

The FAA notes that the proposal excluded the use of ultralights and hang gliders as acceptable aircraft for use in practical tests. The use of ultralights and hang gliders are unacceptable aircraft for use in pilot certificate tests. Ultralights are not required to meet the airworthiness certification, pilot certification, aircraft registration, or aircraft marking requirements of the other aircraft.

In paragraph (b), the FAA proposed to exclude balloons from the current requirement that an aircraft used for the practical test have pilot seats. The existing § 61.45 required that the aircraft used for a flight test have ''pilot seats with adequate visibility for each pilot to operate the aircraft safely.'' Most balloons do not have seats, and this requirement was waived for balloon practical tests.

In proposed paragraph (b)(3), the FAA required that applicants for any practical test, other than a practical test in a balloon, perform the test in a two-place aircraft. This would eliminate the existing provision for an applicant for a gyroplane class rating to accomplish the practical test in a single-place gyroplane. In the past, the FAA has permitted examiners to observe the practical test from the ground when the aircraft was a single-place aircraft. Most gyroplanes are single-place aircraft that require examiners to monitor their use in a practical test from the ground.

In paragraph (c)(3), the FAA proposed to require that the required controls in lighter-than-air aircraft used for a practical test be easily reached and operable in a normal manner by both pilots. An examiner would be permitted to waive the requirement; however, the examiner would have to determine that the lighter-than-air aircraft used for the practical test could be operated safely.

Comments: EAA, NAFI, and AOPA oppose proposed § 61.45(b)(3) requiring that an aircraft have two pilot seats for use in a practical test. NAFI and AOPA comment that the proposed rule is especially unfair to gyroplane applicants who currently are examined with the examiner observing on the ground and communicating by radio. AOPA disputes the FAA's claim that two-place gyroplanes are amply available. AOPA, NAFI, and EAA, however, approve of § 61.45(a)(1), which provides that a practical test may be taken in a primary category aircraft. NAFI states this would lower costs without reducing safety. AOPA states that primary category aircraft can be used in commercial flight operations.

FAA Response: After discussions with many of the manufacturers of gyroplanes, the FAA believes that there are an adequate number of two-place gyroplanes available to permit the FAA to require that a practical test in a gyroplane be taken in a two-place aircraft. The FAA notes the concerns of EAA, NAFI, and AOPA. The FAA believes the importance of the practical test makes it extremely necessary that examiners be able to observe applicants during the practical test. In addition, the FAA replaced the words ''pilot seats'' with ''pilot stations''. Balloons have pilot stations, and, therefore, this change eliminates the need for an exception to be specifically stated in the rule. Except for these changes and other editorial changes to include provisions relating to the use of approved flight simulators and approved flight training devices, the final rule is adopted as proposed.

Section 61.47 Status of an examiner who is authorized by the Administrator to conduct practical tests.

In Notice No. 95–11, the FAA proposed to change the title of this section. The proposal also contained editorial and format revisions, including proposed paragraph (b), which stated that ''The student is the pilot in command of the aircraft during the practical test unless the examiner or another person has been so designated before the flight.''

Comments: AOPA opposes the change in the language of § 61.47(b). The commenter notes that the current rule states that the examiner or inspector is not the pilot in command. AOPA contends that the proposed language creates some ambiguity as to who is pilot in command and notes this ambiguity was addressed in the 1966 amendment to § 61.47, which adopted the existing rule language. HAI suggests modifying proposed § 61.47(b) by replacing the word ''student'' with ''applicant'' because the individual taking the test may have progressed beyond the stage of student.

FAA Response: After reviewing AOPA's comment, the FAA has concluded that the language in proposed paragraph (b) is ambiguous and should be withdrawn and replaced with language equivalent to the existing rule. The proposal is adopted with these changes.

Section 61.49 Retesting after failure.

In Notice No. 95–11, the FAA proposed to delete the requirement for an applicant to wait 30 days before reapplying for a written or practical test following a second and subsequent disapprovals, and, in lieu of the 30-day waiting period, the applicant would be required to receive an endorsement from an authorized ground or flight instructor, as appropriate. The FAA also proposed to reformat this section.

Comments: ATA approves of the proposal to delete the 30-day waiting requirement. AOPA also supports removal of this requirement from the rule. AOPA believes that the requirement caused unnecessary delays in the certification process with no benefit to safety or pilot proficiency.

FAA Response: The proposal is adopted as proposed except for minor editorial changes incorporated into the final rule.

Section 61.51 Pilot logbooks.

In Notice No. 95–11, the FAA proposed to revise and reorganize § 61.51, largely in response to numerous requests for interpretation from the public regarding various aspects of the rules on logging flight time. The changes were intended to clarify procedures as well as to ensure consistency with other changes to part 61.

A significant change proposed was the elimination of the distinction between the concept of acting as pilot in command and the logging of pilot-in-command time. This represented a fundamental change to a 30-year policy, and although one intent was to eliminate much confusion over the proper logging and authority over a flight, the change was directed toward reestablishing the FAA's original intent

that pilot-in-command time should require a pilot to have authority over the flight, and that the pilot not merely be manipulating the controls.

The FAA proposed two paragraphs in Notice No. 95–11; § 61.51(e) ''Two people logging pilot-in-command time,'' and § 61.51(f) ''Student pilots logging pilot-in-command time'' which have been eliminated from the final rule as discussed below.

Proposed § 61.51(e) Two people logging pilot-in-command time.

Proposed paragraph (e) was intended to clarify that when a flight instructor and a certificated pilot are on board an aircraft at the same time, each may log pilot in command flight time. It also was intended to specify the requirements that a flight instructor would need to meet in order to log pilot in command flight time. Although the existing regulation also specified that a flight instructor may log all flight time during which the person acts as a flight instructor as pilot-in-command time, the proposed rule provided more detail regarding the conditions under which this could occur.

Comments: AOPA's objection to the elimination of the concept of ''sole manipulator of the controls'' as a basis for logging pilot-in-command time, discussed below with respect to the final rule's paragraph (e), is also referenced in this proposed paragraph. AOPA and NAFI further disagree with proposed § 61.51(e)(2)(i) because it precludes the logging of instruction time if it is not in a course of training for issuance of a certificate or rating or to obtain the recency of experience requirements. NAFI believes that the proposal penalizes CFIs who give recurrency training or additional instruction such as aircraft transition training. AOPA states that the proposal will provide a strong disincentive for instructors to give the type of training that most contributes to general aviation safety. NBAA also states that the language in proposed § 61.51(e)(2) (i) and (ii) is too prohibitive and recommends deleting the requirement that instruction be ''in a course of training for the issuance of a certificate or rating.'' HAI recommends eliminating all wording after ''flight instructor'' in proposed § 61.51(e)(2)(i), as well as corresponding changes to § 61.51(i), to allow an instructor to log time spent as pilot in command giving aircraft checkouts and currency training. Individual commenters also express the view that the requirement in § 61.51(e)(2)(i) that the training be toward a certificate or rating is too restrictive.

NATA opposes proposed § 61.51(e)(2)(ii) and states that the proposal will eliminate the ability of an instrument student to log instrument training time as pilot-in-command time. This will place an undue financial burden on the student and possibly create a safety hazard if students logging time for their commercial requirements are forced to fly extra hours as pilot in command. NATA does not believe this was the FAA's intent, and the commenter recommends eliminating this language. HAI echoes NATA's concern by stating that the proposed rule effectively prohibits instrument students from logging time spent under IFR as pilot-in-command time, even when the student is the sole manipulator of controls, because the proposed § 61.51(e)(2)(ii) requirement for the student to be qualified in accordance with the operating rule would mean compliance with the proposed § 61.3(e)(1). That rule would dictate possession of an instrument rating in that case. HAI therefore recommends deletion of proposed § 61.51(e)(2)(ii).

AOPA expresses concern about proposed § 61.51(e)(3), which requires that aircraft used for flight training must have dual functioning flight controls and engine controls that can be reached from either pilot station in order for both the student and instructor to log pilot-in-command time. The commenter encourages the FAA to clarify which engine controls must be accessible. According to AOPA, there are many cases when training is conducted in a tandem seat aircraft where there are throttles available to both airmen; however, the mixture control and magneto switch are only accessible from the front seat. AOPA believes that both student and instructor should be able to log pilot-in-command time when instruction is given in such an aircraft. The commenter also states that the proposal does not address the fact that balloons do not have dual functioning controls.

An individual commenter states that the requirement in proposed § 61.51(e)(3) for dual functioning flight controls contradicts § 91.109(a). Another commenter requests clarification of proposed § 61.51(e)(3) to specify which engine controls must be reachable from either pilot station when a pilot and authorized flight instructor both log pilot-in-command time. Echoing AOPA's concerns, the commenter points out that for some tandem seat airplanes, the mixture and ignition controls can only be reached from the front seat. Several individual commenters also point out that it would be impossible for balloons to comply with the dual-control requirement.

Several individual commenters object to the proposed requirement that flight instructors possess at least a third'class medical certificate to log instruction time, stating that for advanced instruction this is unjustified.

FAA Response: After further review, the FAA has determined that the increased regulatory and economic burden resulting from this proposal does not sufficiently establish a safety justification based on operational requirements and accident/incident data. Therefore, the proposed paragraph has been eliminated from the final rule.

Proposed § 61.51(f) Student pilots logging pilot-in-command time.

The FAA proposed to permit student pilots who meet certain provisions to log pilot in command flight time when they: are the sole occupant of the aircraft; have a supervised pilot in command flight endorsement; and are undergoing a course of training for a pilot certificate or rating or are logging pilot-in-command time toward a certificate or rating.

Comments: HAI objects to the wording of proposed § 61.51(f) because it does not provide for students logging pilot-in-command time beyond that needed for experience requirements. HAI asks for clarification as to how the additional time would be logged. AOPA finds the issue of supervised pilot-in-command time unclear with regard to logging of flight time.

FAA Response: For the reasons previously discussed, the FAA is not adopting the proposal to establish supervised pilot-in-command time. However, the final rule still permits student pilots to log solo time as pilot-in-command time according to the provision in § 61.51(e)(4) of the final rule.

Section 61.51(a) Training time and aeronautical experience.

The FAA proposed minor editorial and format changes to this paragraph.

Comments: EAA and NAFI disagree with the removal of the existing rule's phrase ''The logging of other flight time is not required'' from proposed § 61.51(a), stating that the deletion may impose a significant burden on the high time and sport aviation pilot. The commenters state that there is no safety reason to require the logging of all flight time, and the elimination of this provision will only create more enforcement actions against pilots.

FAA Response: The FAA notes the concern of EAA and NAFI, but feels that the existing phrase was redundant, and

that its deletion does not impose costs or burdens on pilots. The rule was revised to clarify what flight time is required to be logged. Other flight time can be logged at the pilot's option, but it is not required. The final rule is adopted as proposed.

Section 61.51(b) Logbook entries.

The FAA proposed to delete the reference to ''solo time'' because of the proposed deletion of that term as discussed in the analysis of § 61.1. The FAA also proposed format changes to the existing rule.

Comments: AOPA comments that ''total time of flight'' in proposed § 61.51(b)(1)(ii) is not defined in the regulations, although it has historically been taken as synonymous with the existing and proposed definition of ''flight time'' in part 1, a term which AOPA states is equated with ''block time'' in most of the industry. AOPA is concerned that, without such a definition, the proposed rule's use of the term ''in actual flight'' confuses the meaning of ''total time of flight.''

FAA Response: As discussed in the analysis of § 61.1, the FAA has decided to retain ''solo time'' in this paragraph of the final rule. The FAA notes AOPA's concern, and has decided to use the less ambiguous term ''flight time'' in the final rule instead of the phrase ''total time of flight''. The final rule also deletes the language ''and the certificate number of the safety pilot'', as explained in the analysis of § 61.51(g), and includes language pertaining to logbook entries for flights conducted in approved flight simulators and approved flight training devices.

Section 61.51(c) Logging of pilot time.

In Notice No. 95–11, the FAA set forth provisions regarding the use of pilot time. No substantive comments were received, and the final rule is adopted as proposed.

Section 61.51(d) Logging of solo flight time.

In Notice No. 95–11, the FAA proposed to eliminate the term ''solo flight time'' and replace it with the term ''supervised pilot-in-command time'' as discussed in the analysis of § 61.1. The existing rule's provisions for logging solo time were therefore also deleted in the proposed rule.

Comments: AOPA states that no provision exists in proposed § 61.51 for logging supervised pilot-in-command time, even though such time is proposed to be required for both primary and advanced certificates. HAI echoes these concerns and asks whether dual pilot-in-command time meets the supervised pilot in command requirements. AOPA states that the definition of supervised pilot-in-command time is unclear, and that introducing the term at the expense of the existing concept of solo time confuses rather than clarifies matters. The commenter states that the change from solo to supervised pilot in command creates problems with respect to numerous other proposed regulations. Many individual commenters shared the concerns of these associations.

FAA Response: The FAA notes the concerns of AOPA, HAI, and other commenters, and is not adopting the new term ''supervised pilot-in-command time'' in the final rule. Accordingly, the final rule adds § 61.51(d), ''Logging of solo flight time,'' which reiterates the provision of existing § 61.51(c).

Section 61.51(e) Logging of pilot-in-command flight time.

In Notice No. 95–11, the FAA clarified the procedures for logging pilot in command flight time in proposed § 61.51 (d) and (e). The FAA specified that, except when a flight instructor provides flight training, only one person may log pilot in command flight time. This provision was intended to eliminate confusion under the existing rule, particularly regarding the provision that permits any pilot to log pilot-in-command time while acting as pilot in command of an aircraft for which more than one pilot is required. The FAA proposed that the holder of a pilot certificate may log pilot-in-command time only when that pilot: (1) Has the final authority and responsibility for the operation and safety of the flight; (2) holds the appropriate ratings; (3) has been designated pilot in command before the flight; and (4) the pilot-in-command time occurred in actual flight conditions and in an aircraft.

Comments: AOPA states that it finds the most notable change to the rules for logging pilot-in-command time to be the elimination of the term ''sole manipulator of controls.'' AOPA notes that there is no longer a distinction between the pilot operating the aircraft and the pilot who has ultimate authority over the flight (acting pilot in command). The commenter urges rethinking the entire pilot in command issue. AOPA also expresses concern about proposed § 61.51(d)(4), which provides that pilot-in-command time may only be logged when the flight time ''occurs in actual flight conditions.'' The commenter notes that proposed § 61.51(b) provides that for purposes of training time and aeronautical experience toward a certificate or rating, a person must enter the ''total time of flight,'' which AOPA states has been historically interpreted as the equivalent of ''flight time'' as defined in part 1. Part 1 defines ''flight time'' as ''the time beginning when an aircraft moves under its own power for purposes of flight and ending when the aircraft comes to rest after landing.'' AOPA contends that the difference between the two provisions may require two separate logbook entries after one flight: one entry for the time the aircraft is in actual flight and another entry for the ''block'' or Hobbs meter time. NBAA joins with AOPA in its concerns regarding use of the term ''actual flight conditions'' in proposed § 61.51(d)(4) as possibly prohibiting taxi time from counting towards flight time. NBAA states that this would discourage learning opportunities during a phase of flight that is critical to safety, especially for avoidance of runway incursions. HAI echoes these concerns, requesting the alignment of the definition of flight time in proposed § 61.51(d)(4) with the definition in § 1.1. HAI also recommends a provision to cover a rated pilot operating solo, such as an additional paragraph in § 61.51(d).

FAA Response: After further review, the FAA has decided not to adopt the proposal to change the provisions for the logging of pilot-in-command time. The FAA has determined that the increased regulatory and economic burden resulting from this proposal is not sufficiently supported by a safety justification based on operational requirements and accident/incident data. However, the FAA would like to take this opportunity to clarify the proper logging of pilot-in-command time for recreational, private, and commercial pilots. The FAA acknowledges there has been confusion in the past regarding the logging of pilot-in-command time by these pilots and that inconsistent policy opinions have been issued by the FAA. The FAA has determined that clarity is necessary to preserve the value of pilot-in-command time. In light of the inconsistent policy opinions issued by the FAA, however, this clarification is meant to be prospective and not to require pilots to ''revisit'' past logging. The FAA's position regarding the proper logging of pilot-in-command time for a recreational, private, or commercial pilot applicable after the effective date of this final rule is set forth in this response.

There are only three ways for a recreational, private, or commercial pilot to properly log pilot-in-command time in accordance with section § 61.51. These pilots may properly log pilot-in-command time: (1) When the pilot is the

sole manipulator of the controls of an aircraft for which the pilot is rated; (2) when the pilot is the sole occupant of the aircraft; or (3) except for recreational pilots, when the pilot is acting as pilot in command of an aircraft for which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

As noted in Notice No. 95–11, there has been a distinction between acting as pilot in command and logging of pilot-in-command time. ''Pilot in command,'' as defined in part 1, ''means the pilot responsible for the operation and safety of an aircraft during flight time.'' Section 61.51 is a flight-time logging regulation under which: (1) pilot-in-command time may be logged by someone who is not actually the pilot in command as defined in part 1 (e.g., when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated but is not the pilot in command as defined in part 1); and (2) pilot-in-command time may not be logged by someone who is the actual pilot in command as defined in part 1 (e.g., when the pilot acting as pilot in command of an aircraft on which more than one pilot is not required under the type certification of the aircraft or the regulations under which the flight is conducted is not the sole manipulator of the controls of the aircraft, and the pilot who is the sole manipulator of the controls is logging that time as pilot-in-command time).

Two recreational, private, or commercial pilots may not simultaneously log pilot in command flight time when one pilot is acting as pilot in command as defined in part 1, and the other pilot is the sole manipulator of the controls, unless the aircraft type certification or the regulations under which the flight is conducted require more than one pilot. In contrast, an ATP may log all flight time as pilot-in-command time when that pilot is acting as the pilot in command as defined in part 1 during an operation requiring an ATP certificate regardless of who is manipulating the controls of the aircraft. This distinction between the concept of acting as pilot in command and the logging of pilot-in-command time will continue in this final rule.

The FAA also notes the concern of AOPA and NBAA regarding the wording ''actual flight conditions'' in proposed § 61.51(d), redesignated as § 61.51(e) in the final rule, and has deleted the objectionable language. The FAA notes that the Amendment No. 61–100 did not include a provision to permit a student pilot to log pilot-in-command time when that student is the sole occupant of the aircraft. Section 61.51(e)(4) includes such a provision.

Section 61.51(f) Logging second-in-command flight time.

The FAA proposed to require a pilot who logs second-in-command flight time to meet the requirements of § 61.55.

Comments: AOPA expresses concern that changes to other regulations made this requirement onerous with respect to safety pilots. Several individual commenters echo AOPA's concerns.

FAA Response: The FAA addressed concerns to this rule by modifying proposed § 61.55 in the final rule, as discussed below, and therefore no major changes were necessary to this paragraph. The FAA has added the phrase ''the regulations under which the flight has been conducted'' in paragraph (f)(2) to permit, for example, safety pilots complying with § 91.109 to be allowed to log second in command time.

Section 61.51(g) Logging instrument flight time.

The FAA proposed to clarify the information required for the logging of instrument experience to meet the instrument currency requirements. The proposal did not significantly alter the current requirements regarding the logging of instrument time. However, the proposal stated that if a safety pilot is required, the name and pilot certificate number of the safety pilot, and the location and kind of each completed instrument approach must be recorded. The existing rule did not require the recording of the safety pilot's certificate number in the logbook of the person logging instrument flight time.

Comments: Some individual commenters disagree with the proposed requirement that the certificate number as well as the name of the safety pilot be logged, stating that this would not improve safety. Commenters note that the certificate number is often the pilot's social security number, which many would hesitate to disclose every time they act as a safety pilot.

FAA Response: The FAA notes the privacy concerns of individual commenters and has therefore deleted the proposed language ''and pilot certificate number'' from the final rule. The final rule also includes language relating to the use of approved flight simulators and approved flight training devices.

Section 61.51(h) Logging training time.

The FAA proposed specific requirements for a pilot to log training time toward a certificate, rating, or flight review. The proposal required that the instructor be properly authorized to give the training, and that the information recorded include a description of the training given, the length of the lesson, and the instructor's signature, certificate number, and certificate expiration date.

Comments: AOPA objects to the proposed language apparently restricting the logging of training time solely to ground or flight instruction time leading toward a certificate, rating, or currency requirements. HAI joins in opposition to this proposal because it does not include provisions for pilots receiving dual training in a simulator or flight training device unless the training is for the purpose of meeting experience requirements. AOPA also asks for clarification as to whether the ''training time'' logged is to be ''flight time'' as defined in part 1, or time in ''actual flight.''

FAA Response: The FAA notes the concerns of AOPA and HAI, and therefore has deleted the proposed language ''for the purpose of obtaining a certificate, rating, or recency of experience requirements, of this part'' from the final rule. AOPA's concern regarding the confusion between ''flight time'' and ''actual flight'' was addressed through the elimination of the wording ''actual flight'' elsewhere in paragraph (b) of this section, as previously discussed.

Section 61.51(i) Presentation of required documents.

In the proposal, the FAA set forth the documents a person would have to present, in addition to the logbook, upon the request of an authorized official. These documents included the person's pilot certificate, medical certificate, or any other record required under part 61. The proposal added Federal law enforcement officials to the list of officials to whom a pilot must present his or her records if requested. The proposal also set forth the documents student and recreational pilots must carry.

Comments: AOPA expresses concern about the deletion of the word ''reasonable'' from this proposal. Citing the constitutional protection against unreasonable search and seizure, the commenter states that this could lead to abuse by law enforcement officials. AOPA questions the addition of ''Federal'' law enforcement officials to the list of officials to whom a logbook must be presented as well as the inclusion of pilot and medical certificates in this proposed rule. AOPA further contends that the inspection of such certificates is adequately addressed in existing § 61.3(h) and proposed

§ 61.3(l). Individual commenters oppose this proposed provision permitting inspection by the FAA, the NTSB, or law enforcement officers. HAI objects to the requirement in proposed § 61.51(j)(2)(i) that a student pilot must carry his or her logbook to exercise the privileges of his or her certificate. Individual commenters object to the requirement that recreational pilots carry logbooks for flight at night and in airspace in which communications are required.

FAA Response: The proposal inadvertently deleted the word ''reasonable'' before ''request.'' In the final rule, the phrase ''reasonable request'' has been retained. The FAA has noted HAI's concern, but is not persuaded that student pilots should be exempt from carrying logbooks on all flights. However, in partial response to HAI's concern, as well as that of individual commenters, the FAA has decided to delete the proposed logbook-carrying requirements for recreational pilots, except for flights of more than 50 nautical miles from the point of departure. In addition, the FAA has changed the heading of this paragraph for clarity, because a student is required to present more than a logbook. The FAA notes that this requirement is contained in the existing rule. Except for these changes, the final rule is adopted as proposed.

Other § 61.51 issues.

The issue of logging safety pilot time did not directly affect any particular paragraph of § 61.51 and is discussed here.

Comments: AOPA feels that proposed § 61.51, in combination with other proposed changes, fails to provide for the logging of safety pilot time. According to the commenter, when a safety pilot also functions as the designated pilot in command, the pilot actually flying the aircraft is not permitted to log pilot-in-command time, nor can the pilot log second in command time since he or she is not a required flight crewmember. It is unclear to the commenter how tasks such as instrument approaches conducted for proficiency can be logged. It also appears to AOPA that the only provision for a safety pilot to log flight time is as second in command under § 61.51(g)(2). The commenter is concerned that a safety pilot acting as a required crewmember in simulated instrument conditions could possibly be subject to the second in command training and recurrency requirements in § 61.55(d). An individual commenter echoes AOPA's concern, stating that proposed § 61.51 fails to address if, when, or how a safety pilot may log flight time.

FAA Response: The FAA did not intend to prevent safety pilots from logging second in command time or to require them to comply with the requirements of proposed § 61.55. The FAA has noted the concerns of AOPA and others, and has modified § 61.51(f)(2) of the final rule to permit safety pilots to log second in command time.

Section 61.53 Operations during medical deficiency.

The FAA proposed to divide this section into two paragraphs. Proposed paragraph (a) applied to operations that require pilots to hold medical certificates issued under part 67. Proposed paragraph (b) applied to operations in which pilots are not required to hold a medical certificate, was developed primarily in response to EAA's petition to permit a pilot without a medical certificate to exercise the privileges of a recreational pilot certificate. Proposed paragraph (b) also applied to glider and balloon operations. The FAA also proposed language specifying that a pilot may not act as pilot in command or as a required flight crewmember while taking medication or receiving other treatment for a medical condition that would make the person unable to meet the medical requirements for the certificate held or to operate an aircraft in a safe manner, as appropriate.

Comments: EAA, AOPA, and NAFI object to the proposed language of § 61.53(a)(1) and (b)(1), which states that a pilot may not act as pilot in command, or as a required crewmember, if that person ''has reason to know of any medical condition that would make the person unable to meet the requirement for the medical certification held.'' These commenters believe that the new standard is very subjective and may produce unnecessary enforcement actions. AOPA states that the language effectively holds an airman to a negligence standard concerning the exercise of the privileges of an airman certificate. NATA joins in the concerns expressed by the other commenters regarding this language and states that it should be changed to reflect ''definitive knowledge'' or eliminated from the rule. GAMA finds this language ambiguous and recommends it be clearly defined or deleted.

FAA Response: After consideration of the comments, the FAA has determined that the disputed language, ''knows or has reason to know'' is necessary to ensure that pilots seriously evaluate their health prior to operating an aircraft. The FAA does not believe that the disputed language imposes an additional burden on pilots because § 61.53 already requires pilots to evaluate their health prior to each flight. The proposed language merely clarifies this existing requirement. The FAA acknowledges that the language is subjective and is relying on pilots to use reasonable judgment. After further review, the FAA has determined that for operations that do not require a medical certificate, the language referring to medication or treatment would effectively establish standards for self-evaluation. Therefore, this language has been deleted for operations that do not require a medical certificate. The FAA has decided to retain the two-paragraph format of the proposed rule because it clarifies a pilot's responsibilities for medical self'evaluation, regardless of whether or not a pilot is required to hold a medical certificate.

The proposal is adopted with minor editorial changes and the changes noted above.

Section 61.55 Second-in-command qualifications.

This proposal was intended to clarify the requirements under § 61.55 for pilots serving as second in command of an aircraft that requires more than one pilot.

Comments: ALPA supports the second in command training requirements of proposed § 61.55. GAMA comments that the addition of flight deck management training is a very positive change. GAMA believes, however, that the desired level of structure and standardization can best be achieved by requiring that the § 61.55 authorization be approached with the same level of control as provided in §§ 61.58 and 61.157. According to GAMA, second in command training should be conducted with an approved syllabus by authorized instructors using established standards of performance.

AOPA is concerned that safety pilots acting as required crewmembers in simulated instrument conditions may be subject to the second in command requirements. The commenter notes that proposed § 61.55(b) provides that no person may act as second in command in ''operations requiring a second in command'' unless that person meets the second in command training and recurrency requirements. AOPA contends that § 91.109 makes a safety pilot a required crewmember in simulated instrument conditions. AOPA states that ''under the proposal the safety pilot may not log pilot-in-command time but that person is required for the operation; therefore the

safety pilot must be second in command.'' AOPA does not believe that a safety pilot should be subject to the second in command qualification requirements and, therefore, recommends that the safety pilot be added to the list in § 61.55 for whom the training requirements of § 61.55(b) do not apply.

FAA Response: After consideration of the comments, the FAA has determined that the proposed second in command training requirements should be adopted with the addition of paragraph (d)(4) to except a person designated as a safety pilot as required by § 91.109(b). The final rule also incorporates other editorial changes and provisions permitting the use of approved flight simulators and approved flight training devices to meet the requirements of this section.

Section 61.56 Flight review.

The FAA did not propose any changes to this section in Notice No. 95–11.

Comments: NAFI recommends modifying proposed § 61.56(f) to except flight instructors who have given 10 or more flight reviews or have recommended 10 or more students for flight tests from the required flight review requirement.

AOPA comments that the current and proposed language of this section is confusing and should be reworded, using the instrument currency requirements as an example.

NAFI suggests that a flight review should not be required for pilots who fly only single-seat aircraft (gyroplanes, for example), because finding a training aircraft and an instructor might be difficult or impossible.

Another commenter opposes the current and proposed language in paragraph (b), which requires a glider pilot who substitutes three instructional flights in lieu of the 1 hour of flight instruction provided for in paragraph (a) to perform 360-degree turns during each of the flights. The commenter states that the requirement for 360-degree turns causes instructors to limit the types of maneuvers conducted during the review.

FAA Response: As adopted in Amendment No. 61–100, this section includes provisions for the use of approved flight simulators and approved flight training devices. The FAA notes that Amendment No. 61–100 omitted the provision permitting a pilot to complete a phase of an FAA-sponsored pilot proficiency award program (i.e., Wings Program) in lieu of accomplishing a flight review. Such a provision is included in paragraph (e).

In response to the comment concerning the performance of 360-degree turns, the FAA has modified the language in paragraph (b) to permit three instructional flights in a glider, each of which requires flight to traffic pattern altitude, in lieu of the 1 hour of flight training required in paragraph (a). This modification should provide instructors with greater flexibility during the conduct of a flight review for glider pilots. The FAA expects that each instructional flight to traffic pattern altitude will consist of a launch, climb, level off, turns, descent, and landing to ensure that the pilot can demonstrate proficiency in each phase of flight.

Section 61.57 Recent flight experience: Pilot-in-command.

Section 61.57(a) General experience.

The FAA proposed to require pilots to make at least three takeoffs and three landings to a full stop within the preceding 90 days to meet the recent flight experience requirements of this section. The FAA also proposed that these takeoffs and landings involve flight in the traffic pattern at the recommended traffic pattern altitude for the airport. For the reasons discussed in section IV,B, the proposal for full-stop landings and the requirement for flight in the traffic pattern at the recommended traffic pattern altitude have not been adopted in the final rule. The existing requirement for full-stop landings in a tailwheel airplane is retained, as well as the recently enacted provisions relating to the use of approved flight simulators and approved flight training devices.

Section 61.57(b) Night takeoff and landing experience.

In Notice No. 95–11, the FAA proposed to delete the reference to the term ''night'' from this paragraph.

Comments: AOPA objects to the elimination of the definition of ''night'' from this section of the regulations because most airmen do not have access to the ''Aeronautical Almanac'' referenced in the part 1 definition of ''night.''

FAA Response: Upon consideration of this comment, the FAA retained the language of the existing rule.

Section 61.57(c) Recent instrument experience.

The FAA proposed to revise the requirements for recent instrument experience to include six instrument approaches, holding procedures, intercepting and tracking VOR radials and NDB bearings, recovery from unusual flight attitudes, and flight by reference to instruments. Under the proposal, these maneuvers were not required to be performed under actual or simulated instrument flight conditions. The proposal also eliminated the requirement for a pilot to log 6 hours of instrument time under actual or simulated flight conditions to meet recent instrument experience requirements. In paragraph (c)(3), the FAA proposed to revise the provisions regarding recent instrument experience for glider pilots.

Comments: According to GAMA, instrument currency in a multiengine airplane should be accepted for instrument currency in a single-engine aircraft, but not the converse. NBAA proposes 12-month currency requirements because most business aircraft operators currently conduct their simulator refresher training on an annual basis. AOPA states that the proposed language is unclear concerning the requirement that if a glider pilot carries passengers, the pilot must have at least 3 hours of instrument time in gliders. The commenter recommends retaining the language of the current rule.

FAA Response: As discussed in section IV,B, the FAA has decided to retain the existing requirement that recent instrument experience be performed in actual or simulated conditions, and withdraw the proposed requirements for recovery from unusual flight attitudes, and the intercepting and tracking of VOR radials and NBD bearings. In lieu of the latter requirement, § 61.57(c)(1)(iii) is modified to require a pilot to intercept and track courses through the use of navigation systems. The FAA modified § 61.57(c)(1) to require instrument experience ''under actual or simulated instrument conditions either in flight appropriate to the category of aircraft for the instrument privileges sought or in an approved flight simulator or flight training device that is representative of the aircraft category for the instrument privileges sought. * * *'' The FAA notes that GAMA's comment would impose an additional economic burden on pilots, and would therefore continue to require that flight time used to satisfy instrument recency experience be in the category but not the class of aircraft for which instrument privileges are sought. The FAA believes that the removal of the proposed requirement to perform and log recovery from unusual attitudes should relieve the concern expressed by NBAA since compliance with the remaining requirements should be achievable in normal flight operations. In consideration of AOPA's comment, the FAA has clarified the language of paragraph (c)(2) in the final rule. The

FAA also included in paragraph (c)(2) the requirement that the instrument experience be performed and logged under actual or simulated instrument conditions.

Section 61.57(d) Instrument proficiency check.

The FAA proposed to clarify this paragraph by requiring that the instrument proficiency check include a representative number of the tasks required for original certification of an instrument rating and by replacing the term ''instrument competency check'' with ''instrument proficiency check''.

Comments: GAMA states that the instrument proficiency check will be better defined by the inclusion of the tasks listed in § 61.57 (c)(1)(i) through (c)(1)(v). NAFI, however, objects to the requirement that the check consist of a representative number of the tasks required in the instrument rating practical test. NAFI states that a proficiency check should be restricted to those items a pilot is likely to encounter in his or her flying environment.

Some individual commenters express uncertainty regarding the change in terminology from ''instrument competency check'', in the current regulation, to ''instrument proficiency check'', as specified in the proposed rule language. They point out that this check is referred to as an ''instrument proficiency test'' in the preamble. At least one commenter advocates that instrument-rated pilots should undergo a ''check'' every 6 months.

FAA Response: After consideration of the comments, the FAA has determined that the requirement to perform a representative number of tasks required by the instrument rating practical test will promote safety, and that a required ''check'' every 6 months, as proposed by one commenter, would impose an unwarranted economic burden on pilots seeking to retain instrument privileges. To maintain consistency in terminology throughout the rule, the proposal to change the term ''instrument competency check'' to ''instrument proficiency check'' is also adopted. In addition, the FAA has modified the language in paragraph (d) to reflect that an instrument proficiency check need only be accomplished in the category of aircraft for which instrument privileges are sought. Amendment No. 61–100 inadvertently required that this check be accomplished in the class of aircraft for which privileges are sought.

Section 61.57(e) Exceptions.

The FAA proposed to extend the exception requirements for the general and night recency experience requirements of § 61.57 to pilots in command in part 125 operations.

Comments: HAI questions why takeoff and landing currency does not apply to part 121, 125, or 135.

FAA Response: In response to HAI's query, § 61.57(e) excepts these pilots because they are required to meet recent experience requirements under §§ 121.439, 125.285, and 135.247. In Notice No. 95–11, the FAA inadvertently omitted the references to §§ 121.437, 121.439, 135.243, and 135.247 from this paragraph and has therefore included them in the final rule. In addition, the final rule modifies paragraph (e)(1) to require explicitly that pilots operating under the exception for pilots employed by part 125 operators comply with §§ 125.281 and 125.285, because the FAA has determined that pilot in command qualifications and the recent experience requirements under part 125 are equivalent to the general and night recency requirements under part 61.

The proposal is adopted with the changes discussed above and minor editorial changes.

Section 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

The FAA proposed minor editorial and format modifications to this section in Notice No. 95–11, including a proposal to revise former § 61.58 (b)(3), (c)(2), and (e) by eliminating references to part 127, because no certificate holders currently operate under part 127. Furthermore, the FAA proposed to add part 125 operators to existing § 61.58 (b)(3), (c)(2), and (e) in reference to persons conducting operations under part 125. Part 125 operators were not addressed in this section when the part was initially established, therefore, the FAA proposed to include part 125 pilots.

Additionally, the proposal required a pilot seeking an aircraft type rating to perform to ATP standards, which codified the existing policy for FAA pilot certification standards. The FAA also proposed to remove the obsolete reference to part 123 and part 127 operators.

The FAA has modified the final rule so that § 61.58 is substantially equivalent to the provisions set forth in Amendment No. 61–100. No substantive comments were received.

Section 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

Minor editorial changes were proposed to this section, and it is adopted as proposed.

Section 61.60 Change of address.

The FAA proposed editorial and format changes to this section. The FAA also proposed to revise this section to include ground instructor certificates.

Comments: AOPA objects to the proposed language in this section that provides that an airman may not exercise the privileges of a certificate unless he or she notifies the FAA of the change within 30 days. AOPA believes that the use of the word ''unless'' could be interpreted to permanently prohibit the exercise of privileges if the notification was not made in 30 days. The commenter also points out that ground instructor certificates were not included in the proposal.

FAA Response: The FAA did not intend the interpretation suggested by the commenter and does not believe that the language reasonably would be interpreted in this manner. Similar language was used in the existing rule without any such confusion. Although the FAA acknowledges that the reference to ground instructor certificates was not specifically stated, the term ''airman certificate'' includes ''ground instructor certificate.'' However, the final rule is modified by replacing ''Persons who hold an airman certificate'' with ''The holder of a pilot, flight instructor, or ground instructor certificate'' to avoid any possible confusion. In addition, the reference to ''new address'' has been clarified to incorporate current policy, which is to not accept post office box numbers as the permanent mailing address.

The proposal is adopted with the above modification and minor editorial changes.

Subpart B—Aircraft Ratings and Pilot Authorizations

Section 61.61 Applicability.

The FAA proposed to delete the words ''or instructor'' from this section because the issuance of an additional rating for a flight instructor certificate is contained in subpart H of part 61.

No substantive comments addressing this proposal were received. The FAA deleted the reference to ''special purpose authorizations'' from the final rule and substituted the term ''pilot authorizations'' because subpart B applies to additional pilot authorizations.

Section 61.63 Additional aircraft ratings (other than airline transport pilot.)

In Notice No. 95–11, the FAA proposed to revise the title of this section, reformat the section for clarity, and revise the required aeronautical experience and training requirements for persons seeking an additional category and class rating. The proposal also clarified when an applicant would be required to accomplish a knowledge test. In addition, the FAA proposed to restrict the issuance of a ''VFR only'' limitation for an aircraft type rating to only those aircraft that cannot be used to accomplish the practical test under IFR because its type certificate makes the aircraft incapable of operating under IFR.

Comments: HAI states that proposed § 61.63(a)(1) seems to contradict proposed § 61.63(a)(5), which states that supervised pilot in command is not required. The commenter asks whether it is the FAA's intention that no solo time be required for an additional category rating. HAI states that in such a circumstance, a rated airplane pilot transitioning to helicopters ''would never experience picking the aircraft up with an empty seat.'' HAI asks that proposed § 61.63(a)(5) be deleted because some solo time in a different category or class aircraft should be required.

FAA Response: The FAA agrees with HAI's position and has deleted proposed § 61.63(a)(5) from the final rule. In addition, the FAA has modified the rule to ensure that pilots are required to meet the aeronautical experience requirements for the pilot certificate and class rating sought. Also, the FAA has included the provisions of § 61.64 adopted in Amendment No. 61–100 in this section and added provisions applicable to the use of a flight simulator or flight training device to obtain an additional rating in a powered-lift. Section 61.64 has been reserved.

Additionally, the FAA has corrected an inadvertent omission in existing § 61.64 (h) and (i) by permitting a type rating for a single station airplane to be obtained in a multiseat version of that airplane. The final rule also eliminates an error noted in § 61.64 as adopted in Amendment No. 61–100. The existing rule incorrectly requires all applicants for an additional category rating or class rating to take a knowledge test.

Section 61.65 Instrument rating requirements.

In Notice No. 95–11, the FAA proposed revisions to § 61.65, including changes to the specified aeronautical knowledge areas, areas of operation, aeronautical experience requirements, and instrument training requirements. Significant changes proposed included elimination of the existing aeronautical experience requirements of 125 hours total time and 50 hours pilot in command cross-country time; an increase in the required instrument training time received from an instrument instructor to 40 hours compared to 15 hours in the existing rule; and the addition of new category- and class-specific requirements for airplanes, helicopters, and powered-lift. The proposed changes, comments received, and the FAA response to the elimination of the existing 125-hour total time and 50-hour pilot in command cross-country time requirements are discussed in greater detail in section IV, E.

In the FAA proposal, the section was organized by listing requirements in a more concise format. The FAA believes this will help the applicant and the examiner know more readily which requirements are to be met.

The FAA added a requirement in proposed paragraph (a)(2) for applicants to be able to write in the English language, while deleting existing provisions for the Administrator to place a limitation on the certificates of those unable to meet the English language requirements.

In proposed paragraph (a)(4), the FAA required an applicant to receive training or complete a home-study program, and receive an endorsement from a ground or flight instructor certifying that the applicant received training on the required aeronautical knowledge areas of this section that are appropriate to the instrument rating sought. The paragraph also specified that an applicant for a practical test must receive an endorsement from the flight instructor who gave the applicant training certifying that the applicant is prepared for the practical test.

Proposed paragraph (a)(7) specified that an applicant who completes an instrument practical test in a multiengine airplane and who holds an airplane category and single-engine class rating is considered to have met the requirements for an instrument rating in a single-engine airplane.

In the aeronautical knowledge requirements of proposed paragraph (b) added requirements included training in windshear avoidance, aeronautical decision making and judgment in the aeronautical knowledge requirements, and flight deck resource management, to include crew communications and coordination.

In proposed paragraph (c), the term ''flight proficiency requirements'' is replaced with ''areas of operation''. The new requirements included a change from existing language for specific training in the VOR, ADF, and ILS systems to a more general requirement for training in instrument approach procedures.

In proposed paragraph (d)(1), the FAA required 40 hours of instrument training from an instrument instructor. Although the existing rule required 40 hours of simulated or actual instrument time, only 15 hours of instrument flight instruction from a CFII were required. Proposed paragraph (d)(3) required that 5 hours of instrument training be received in the appropriate category and class, while paragraph (d)(4) required 3 hours of such class-specific training within 60 days preceding the test. In proposed paragraph (d)(5), the FAA revised the 250-nautical-mile, cross-country requirement of instrument rating-airplane applicants. It was specified that at least one leg, measured as a straight-line distance, be greater than 100 nautical miles between airports, and that the cross-country be conducted under IFR. However, the proposal deleted the existing requirement that this flight be conducted under simulated or actual instrument conditions, and specified three different kinds of approaches be conducted during the flight instead of VOR, ADF, and ILS systems, as provided for in the existing rule. Similar changes were proposed in paragraph (d)(6) for the instrument rating helicopter requirements, in which the required cross-country flight was 100 nautical miles with one segment of more than 50 nautical miles. Paragraphs (d)(7) and (d)(8) proposed similar requirements, with specified distances for airship and powered-lift instrument ratings, respectively.

Comments: Citing § 61.65(a)(4)(iv), HAI comments that the language requiring an applicant to ''have received an endorsement from the instructor who gave the training'' occurs frequently and could be interpreted to mean that all training required for the rating must be from one instructor. HAI states that this could be a problem if an instructor becomes unavailable during training.

AOPA expresses concern that, in proposed paragraph (b), the FAA failed to include its new aeronautical knowledge area of planning for air traffic delays. The commenter states that this requirement was included inappropriately for recreational and private pilots, while instrument-rated pilots are far more likely to encounter air traffic delays.

HAI objects to the requirement in proposed § 61.65(d)(1) that 40 hours of instrument training be obtained from a CFII or instrument ground instructor. The commenter states that currently part of this training can be logged with either a safety pilot or from a CFI.

NAFI opposes the proposed paragraph (d) cross-country requirements, especially the 100-nautical-mile leg requirement. NAFI does not see a need for this requirement and states that it would preclude a cross-country of three relatively equal legs. NAFI comments that cross-country flight already would have been demonstrated during private pilot training. According to NAFI, it also may be difficult to meet the requirement for three different types of approaches, as well as an instrument approach 100 nautical miles away, in some parts of the country. AOPA also objects to the 100-nautical-mile leg requirement, because it would limit training flexibility. AOPA comments that most learning during instrument training results from entering and exiting the terminal environment. An individual commenter echoes AOPA's concern.

NATA is in opposition to two aspects of the proposed requirements for the instrument rating long cross-country flight. According to NATA, the requirement in proposed § 61.65(d)(5) that the flight be performed in a class-specific aircraft ''poses an unnecessary economic burden on the student, with no benefit.'' NATA also opposes the elimination of any requirement for specific types of approaches and states that at least one precision approach should be required.

AOPA states that the proposed requirement for the instrument cross-country flight to be conducted under ''IFR'' creates significant confusion because the term ''IFR'' is not defined in part 1 or part 61. AOPA interprets the new language to require the flight to be conducted under IMC or that a flight plan be filed. The commenter states that, under its interpretation of the proposal, the flight instructor would need to posses a medical certificate since the instructor would have to be pilot in command for purposes of filing a flight plan. AOPA urges the retention of the current language, which requires the flight to be conducted under ''actual or simulated IFR conditions.''

HAI states that training helicopters such as the R–22 are not certificated for flight in instrument conditions. The commenter asks whether a helicopter not certificated for flight in IMC can legally be flown on an IFR flight plan, and adds that, if the flight is done under IFR, and VMC cannot be maintained, then the pilot will need to cancel IFR and reattempt to meet this requirement.

Additionally, several comments oppose the proposal to eliminate the requirement that the cross-country flight be flown under actual or simulated instrument conditions. One individual commenter states that the visual reference removes the need for maintaining spatial orientation and a consistent scan of the panel, and that the requirement would reduce the flight to just another VFR flight. Commenters recommend a requirement for 2 to 5 flight-time hours in actual instrument conditions.

In addition, commenters offer various views on the use of flight simulators or ground training devices, advocating either less or more use of such equipment during the instrument training. GAMA comments that simulators and flight training devices provide much more effective training than simply requiring the pilot to log a certain amount of ''unfocused'' flight time. GAMA, the FAA, and university research, as well as the U.S. military, have demonstrated that, with the proper instruction, relatively low-time pilots can readily learn instrument flying skills. AOPA, NBAA, and several individual commenters echo these views and encourage the FAA to expedite the integration of personal computer-based flight training devices for instrument training and proficiency.

FAA Response: The FAA acknowledges HAI's concern regarding the language ''the instructor who gave that person the training'' and therefore has deleted the objectionable language. The FAA has changed the language in the recreational and private pilot aeronautical knowledge area requirements so that it now refers to delays rather than specifically to ATC delays. ATC delays concerning instrument rated pilots are addressed in § 61.65(b)(3), which provides for training in the air traffic control system and procedures for instrument flight operations. The FAA notes HAI's objection to proposed § 61.65(d)(1). The change resulted in an inadvertent increase in the amount of instrument time that must be obtained from a CFII. The FAA has noted this error and corrected it in the final rule. The FAA is adopting in the final rule the proposal to eliminate the existing 125-hour total time requirement, but is not eliminating the 50-hour pilot in command cross-country time requirement, as discussed in section IV,E.

In response to NATA's concerns regarding class-specific aircraft requirements within the proposed rule, the FAA has withdrawn the proposed class-specific instrument rating, with the exception of the powered-lift instrument rating, as explained in section IV,F. NATA's other objection regarding the elimination of the requirements for specific types of approaches, including precision approaches, is addressed in § 61.65(c)(6). The requirement for specific types of approaches was deleted from the aeronautical experience requirements in § 61.65; precision approaches are still covered in the PTS. The objections of AOPA and NAFI to the 100-mile leg requirement are noted, and the FAA has decided to withdraw the proposal and return to current requirements. The FAA's intent was to clarify the regulation but, based on the comments submitted, the provision resulted in greater confusion and did not provide the flexibility for pilots to plan their cross-country flights according to individual situations. In addition, based on the above, the FAA has decided to remove from the final rule the 50-mile leg requirement for helicopters. In response to AOPA's and HAI's comment regarding the use of the term ''IFR,'' it is the FAA's intent to require a person to file an instrument flight plan and perform a flight under IFR, although not necessarily under IMC. Therefore, the FAA is going forward with the proposal. The objections raised by commenters regarding the need for instrument training in actual or simulated conditions are not valid because the definition of instrument training includes a requirement for actual or simulated conditions.

Addressing concerns raised throughout the proposed regulations, the final rule modifications to this section also include the insertion of language restoring the ability of the Administrator to place operating limitations on an applicant unable to meet the English language requirements, as discussed in section IV,G; and deletion of provisions for the proposed instrument airship rating, because that rating was not adopted, as discussed in section IV,D. Similarly, as discussed in section IV,D, the FAA is not adopting the proposal to separate the instrument rating into single and multiengine classes, the proposed paragraph giving single-engine instrument privileges to applicants who pass the instrument rating practical test in multiengine practical test is redundant and therefore deleted.

The use of ground training devices was addressed in Amendment No. 61–100. These provisions are included in the final rule.

Additionally, the final rule corrects several errors noted in paragraph (g) of the existing rule as adopted in Amendment No. 61–100. Existing paragraph (g)(1) erroneously contains the word ''any'' prior to the phrase ''category, class, and type aircraft that is certificated for flight in instrument conditions.'' This incorrectly allows the use of any category, class, and type of aircraft during the practical test; e.g., the use of a helicopter for an airplane instrument rating practical test. Also, that same paragraph in the existing rule contains the phrase ''that is certificated for flight in instrument conditions.'' That language unintentionally precludes practical testing in some aircraft that may not be certificated for flight into instrument meteorological conditions, but which may be operated under instrument flight rules, provided the flight is conducted in weather conditions that meet the requirements for flight under visual flight rules.

In response to a comment received regarding Amendment No. 61–100, requesting clarification on the use of a flight simulator or flight training device during the practical test, the FAA has revised paragraph (a)(8) of the final rule to provide for the use of a flight simulator or a flight training device for the conduct of a practical test if that flight simulator or flight training device is approved for the procedure performed. The final rule also limits the procedures which may be performed in an approved flight training device to one precision and one nonprecision approach provided the flight training device is approved.

The format of the final rule was further changed to accommodate the included modifications.

Section 61.67 Category II pilot authorization requirements.

In Notice No. 95–11, the FAA noted that this section was addressed in a separate NPRM titled ''Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking at Training Centers,'' that was issued on July 15, 1992 (57 FR 35918; August 11, 1992). On July 2, 1996, the provisions contained in that notice were issued as a final rule in Amendment No. 61–100. The provisions of § 61.67 set forth in that rule have also been included in this final rule with only minor editorial changes.

Section 61.68 Category III pilot authorization requirements.

Although this section was not included in Notice No. 95–11, its provisions were adopted as part of Amendment No. 61–100. The provisions of § 61.68 have therefore been included in this final rule with only minor editorial changes.

Section 61.69 Glider towing: Experience and training requirements.

In Notice No. 95–11, proposed § 61.69 was reformatted and revised. The FAA proposed to revise the title of this section to read, ''Glider towing: Experience and training requirements.'' The title of the existing § 61.69 read ''Glider towing: Experience and instruction requirements.''

The FAA proposed in paragraph (a) to clarify the requirements for a pilot who desires to act as a pilot in command of an aircraft towing a glider. Proposed paragraph (b) clarifies the requirements for a pilot who accompanies that person, specifying that the accompanying pilot, not the applicant, is required to have at least 10 flight hours as a pilot in command of an aircraft towing a flight.

The FAA also proposed to eliminate the second alternative of existing § 61.69, which allowed for a person to have made at least three flights as sole manipulator of the controls of an aircraft simulating glider towing flight procedures and at least three flights as pilot or observer in a glider being towed by an aircraft in order to qualify as a pilot in command of an aircraft towing a glider. The FAA proposed to require that to be eligible for glider towing, the pilot must have specified experience actually towing gliders under the supervision of an experienced pilot.

Comments: SSA opposes the elimination of the existing rule's second method for tow endorsement from § 61.69. The commenter states that the elimination of this option would create a severe limitation for commercial operators and clubs that tow with single-place towplanes. SSA contends that the proposed rule would require these operators to have available an aircraft with two pilot seats and a tow hitch to complete a checkout, or to hire a multiplace towplane with a tow hitch from another airport or operator. SSA also believes that the wording of proposed § 61.69(b)(3), which lists the requirements an instructor must meet prior to being authorized to endorse another pilot for towing, is unclear. AOPA, EAA, and NAFI support SSA's comments on glider towing. AOPA adds that § 61.69 refers to towing with a ''single-engine airplane,'' ignoring that it is possible for a multiengine airplane to be used. NAFI echoes this last comment by AOPA. An individual commenter agreed with the objection to eliminating the existing rule's second option, citing it as the only one available when the towplane has a single seat, such as is the case for the Piper PA–25 (Pawnee).

FAA Response: The FAA considered the comments of AOPA, EAA, NAFI, and SSA, which oppose the elimination of the existing rule's method for tow endorsement (simulated tow). After further review of the proposal, the FAA has concluded that operational requirements and accident/incident data do not establish a safety justification sufficient for the increased regulatory and economic burden. Therefore, the existing method has been reinstated.

Addressing AOPA's concern that the proposal's use of the term ''single-engine airplane'' was too specific, the FAA has replaced that term in the final rule. The final rule requires the towing pilot to be certificated in a powered aircraft. The final rule revises the proposed 100-hour pilot-in-command time requirement to specify ''category, class, and type, if required'' rather than the proposed ''single-engine airplanes.'' Other references to ''single-engine airplane'' were replaced by ''aircraft.'' The final rule also restores the recency of experience requirements for glider towing. The proposed rule inadvertently deleted recency of experience requirements for glider towing, although it did include the requirements for the pilots accompanying glider towing trainees. These requirements have been included in the final rule.

Section 61.71 Graduates of an approved training program, other than under this part: Special rules.

In Notice No. 95–11, the FAA proposed to change the title of this section. In addition, the FAA proposed to permit the crediting of training conducted under part 141- or part 142-approved training programs, and the issuance of an ATP certificate, type rating, or both, to a person who has satisfactorily accomplished an approved training program and a pilot in command proficiency check for that aircraft type, in accordance with the pilot in command requirements of subparts N and O of part 121 of this chapter. The proposal also deleted the existing requirement for an applicant seeking an instrument rating who graduates from a pilot school certificated under part 141 to hold a commercial pilot certificate and a second-class medical certificate, and the requirement that graduates of pilot schools with examining authority must apply for a certificate or rating within 90 days.

Comments: AOPA opposes retention of the current requirement in § 61.71(a)(1), which provides a 60-day limitation on graduates from a part 141

or part 142 school to take a practical flight test. The commenter encourages the FAA to increase this period to 90 days to accommodate graduates of university-based schools who may not complete their phase checks until the end of the semester and might have an intervening period for travel or job considerations before they can perform the practical test.

FAA Response: In response to AOPA's recommendations, the FAA has found that the 60-day requirement is adequate and consequently § 61.71, as proposed, is adopted with only minor editorial changes.

Section 61.73 Military pilots or former military pilots: Special rules.

The proposed changes in this section clarified that military and former military pilots would be required to have graduated from a military pilot training course or military pilot flight school, and received official military aeronautical orders before applying for their commercial pilot certificate. In Notice No. 95–11, the provision in existing § 61.73(a) that permitted military pilots to apply for a private pilot certificate was deleted because, historically, military pilots have not chosen a private pilot certificate when a commercial pilot certificate could be issued without complying with any further requirements. Also, existing § 61.73(g)(6) was deleted because Tactical (Pink) Instrument cards were last issued by the Army in 1971. In addition, the content of existing § 61.73(d)(2) was moved to proposed § 61.73(d)(5), and the limitation for ''VFR only'' was deleted because, since 1972, all U.S. military pilot training requires instrument qualification training. The proposed rule also included an administrative clarification for elevating type ratings on the superseded pilot certificate to the ATP certificate level, and implemented minor wording and structure changes.

Comments: One commenter states that although military training surpasses part 61 requirements, pilots should not receive authorization to fly sophisticated piston-engine aircraft without any previous experience with controllable pitch-propeller aircraft.

FAA Response: In answer to the commenter's concern, the FAA already requires additional training and an endorsement to operate complex and high-performance airplanes as provided in § 61.31 of this chapter. To impose additional requirements would be beyond the scope of this rulemaking. Therefore, this proposed section was implemented with only minor clarifying language changes.

Section 61.75 Private pilot certificate issued on basis of a foreign pilot license.

In Notice No. 95–11, the FAA proposed changes to § 61.75 regarding issuance of a U.S. pilot certificate on the basis of a foreign pilot license.

The title of proposed § 61.75 would be changed from ''Pilot certificate issued on basis of a foreign pilot license'' to ''Private pilot certificate issued on basis of a foreign pilot license.''

The FAA proposed in paragraph (b) to delete the existing provision that permitted a pilot with a foreign commercial, senior commercial, or ATP license to apply for a U.S. commercial pilot certificate. The FAA proposed to permit those pilots to apply only for a U.S. private pilot certificate, with appropriate ratings. Proposed paragraph (b)(4) added a provision that would permit an applicant to use his or her medical certificate issued by the country that issued the foreign pilot license in lieu of a medical certificate issued under part 67.

In proposed paragraph (e), the FAA deleted existing language that based pilot privileges on those authorized by the foreign pilot license, while adding a provision in proposed paragraph (e)(2) stating that a holder of a private pilot certificate, issued under this section, is limited to the privileges placed on that certificate by the Administrator. Proposed paragraph (e)(3) added a provision stating that a holder of a private pilot certificate, issued under this section, is subject to the limitations and restrictions on the person's U.S. certificate and foreign pilot license. A provision was added in proposed paragraph (e)(4) that restricts each foreign pilot license holder from exercising the privileges of his or her U.S. pilot certificate while that holder's foreign license is under an order of revocation or suspension.

Proposed paragraph (f) added a provision that would require a pilot with a foreign pilot license to submit a transcription of that foreign pilot license and that pilot's medical certificate in the English language, unless the licenses and limitations are already in the English language.

In proposed paragraph (g), the FAA required an applicant for a U.S. pilot certificate to read, speak, write, and understand the English language. Also deleted in this paragraph was existing language specifically disallowing the U.S. certificate issued under this section to be used for agricultural operations. A provision was added to this paragraph that states that the U.S. private pilot certificate, issued under this section, is valid only when that person has a foreign pilot license in his or her personal possession or readily accessible in the aircraft.

Comments: No substantive comment was received. Therefore, specifically with regard to this section, apart from editing changes, the final rule is adopted as proposed.

Section 61.77 Special purpose flight authorization: Operation of U.S.-registered civil aircraft leased by a person who is not a U.S. citizen.

The FAA proposed to replace the current special purpose pilot certificate for foreign pilots of U.S.-registered aircraft with a special purpose pilot authorization. The FAA recognizes ''authorizations'' as equivalent to certificates issued by the Administrator under 49 U.S.C. § 44711(a)(2), formerly the Federal Aviation Act of 1958, as amended, to be issued by a Flight Standards District Office (FSDO) under § 61.77. In addition, the FAA proposed to clarify § 61.77 to align the ''age 60'' rule for pilots with the requirements of part 121 for all U.S. and foreign pilots who are 60 years of age or older, and who are employed by foreign air carriers that operate U.S.-registered civil aircraft for compensation or hire in scheduled international air services and nonscheduled international air transport operations.

Comments: AOPA, EAA, and NAFI oppose § 61.77(b)(6) and (e)(4) because the proposed age limitation represents ''blatant age discrimination,'' and they believe that it is inappropriate to include such provisions because the matter is at issue in Congress and the courts.

FAA Response: Notice No. 95–11 proposed to align the age 60 rule with similar provisions in part 121. As previously discussed in the analysis of § 61.3, part 121 was revised to include certain commuter operations previously addressed in part 135. Accordingly, the FAA is amending the applicability of the age limitation in § 61.77 to be consistent with current part 121, as well as with § 61.3(j). The FAA invites comments on the inclusion of additional aircraft operations under the age 60 limitation as set forth in § 61.77.

In the past, § 61.77 has applied only to aircraft engaged in part 121 operations; therefore, the age 60 limitation applied to all holders of certificates issued under § 61.77. Because the applicability of § 61.77 is now expanded to all civil aircraft, the age 60 limitation will not apply to all special purpose pilot authorizations, and reaching the age of 60 will not result in the expiration of the authorization.

As discussed in connection with § 61.3(j), the FAA is delaying implementation of the age 60 limitation for pilots of commuter aircraft that now will be governed by part 121. A similar delayed implementation is in § 61.77(g).

Subpart C—Student Pilots

The FAA proposed to establish separate subparts for student pilots and recreational pilots. In addition, the title of subpart C was revised from ''Student and Recreational Pilots'' to ''Student Pilots.'' The final rule includes these changes as proposed.

Section 61.81 Applicability.

The FAA proposed to delete the reference to recreational pilot certificates and ratings in this section, which were included in proposed subpart D. No substantive comments were received, and the rule is adopted as proposed.

Section 61.83 Eligibility requirements for student pilots.

Proposed paragraph (c) added a requirement that an applicant be able to write in the English language. The existing rule only required an applicant to have the ability to read, speak, and understand the English language. In addition, the proposed rule applied to all applicants, eliminating the existing provision that permits applicants who cannot read, speak, and understand the English language to receive a certificate with an operating limitation as deemed necessary by the Administrator.

Proposed paragraphs (d) and (e) included minor revisions to the medical requirements for applicants who desire a rating in a glider or a balloon.

Comments: AOPA and IDPA express the same concerns previously discussed regarding the deletion of the existing language that permitted operating limitations for those applicants unable to read and speak the English language due to medical conditions.

FAA Response: Upon reviewing the concerns of AOPA, IDPA, and other commenters, the FAA has restored language permitting an operating limitation for medical conditions. This issue is discussed in section IV,G. In addition, the FAA has placed the references to medical requirements for student pilots in § 61.23, as discussed in the analysis of that section.

Section 61.85 Application.

In Notice No. 95–11, no substantive changes were made to this section, which would permit an applicant for a student pilot certificate to submit a certification that he or she has no known medical defect that would make him or her unable to pilot an aircraft. As a result of the separation of the student pilot certificate from the medical certificate, all requirements that pertain to the issuance of medical certificates and the conduct of pilot operations during any medical deficiency are contained in §§ 61.23 and 61.53 of the final rule. These requirements are further explained in the analysis of §§ 61.23 and 61.53.

Section 61.87 Solo requirements for student pilots.

In Notice No. 95–11, the FAA proposed to change the title of § 61.87 from ''Solo flight requirements for student pilots'' to ''Supervised pilot in command requirements for student pilots''. Additionally, the term ''solo'' was replaced with ''supervised pilot in command'' for reasons discussed in the analysis of § 61.1.

This section was revised to include separate supervised pilot in command maneuvers and procedures for the airplane single-engine rating, airplane multiengine rating, rotorcraft helicopter rating, rotorcraft gyroplane rating, glider nonpowered rating, glider powered rating, lighter-than-air airship rating, lighter-than-air balloon rating, and powered-lift rating. Comments addressed various proposed requirements within this section and are discussed below. For reasons discussed in the analysis of § 61.1, the FAA is retaining the term ''solo.'' The proposed term ''supervised pilot in command'' is being replaced by the existing term ''solo'' throughout the final rule, where appropriate. Additionally, the language of the proposal has been modified for clarity.

Section 61.87(a), General; and Section 61.87(b), Aeronautical knowledge.

Proposed paragraph (a) deleted the existing definition of the term ''solo flight.'' In paragraph (b), the FAA proposed to replace the term ''written examination'' with the term ''test'' to permit the administration of the required test in a format other than on paper (e.g., computer response).

Comments: AOPA and NAFI oppose the requirement in proposed § 61.87(b) that a student take a written test prior to engaging in supervised pilot in command. The commenters state that most instructors conduct this test already, and many insurance companies require flight schools to perform such tests; codifying the provision needlessly adds to an instructor's burden and exposure to enforcement action. AOPA also comments that the FAA has not presented any justification for the proposed change. According to AOPA, there is no indication that the proposal will enhance safety. An individual commenter proposes that the test should not necessarily have to be administered by the instructor, as long as the instructor reviews the test results with the student.

FAA Response: A definition of ''solo flight'' similar to that of the existing rule has been added to paragraph (a) of the final rule. In this new definition, the phrase ''an airship'' has been replaced by ''a gas balloon or an airship''. In paragraph (b), the first proposed reference to the word ''test'' has been replaced with ''knowledge test'', for consistency with new FAA usage. Regarding the existence of the test requirement itself, the FAA notes the concerns of AOPA and NAFI, but points out that the requirement merely reflects the existing rule. Therefore, this final rule is adopted with the changes discussed above.

Section 61.87(c), Pre-solo flight training.

The FAA proposed some minor reformatting of existing requirements but no substantive change to this paragraph.

Comments: SSA recommends modifying proposed § 61.87(c)(1) to provide for supervised pilot in command in single-place gliders. According to SSA, it is very common to solo a student in a two-place glider and, when competent, in a single-place glider of similar characteristics. SSA comments that the existing and proposed versions of § 61.87(c) limit solo flights to aircraft with more than one seat by using the phrase ''in make and model.'' SSA states that Notice No. 95–11 proposes to give an instructor authority to endorse a student for supervised pilot in command in a single-place glider, but the commenter believes that the rule should be explicit on this issue. SSA proposes the following language: ''For single-place aircraft, the pre-supervised pilot in command training must have been received in an aircraft that has two pilot seats and is of the same category, class, and type, as appropriate, and the single-place aircraft must have similar flight characteristics to those of the aircraft with two pilot seats.''

FAA Response: The FAA has modified § 61.87(c)(2) to permit a student pilot to demonstrate flight proficiency in a similar make and model of aircraft to that in which the student pilot will conduct solo flight. The FAA notes that similar make and model aircraft should be of a similar design, with similar operating, performance, flight, and handling characteristics. The

revision made by the FAA to the proposal made in Notice No. 95–11 will apply to all categories and classes of aircraft. As examples, the proposed revision will permit a student pilot to receive flight training in a Schweizer 2–33 and solo a Schweizer 1–26, or receive flight training in a two-place gyroplane but solo in a single-place version of that same gyroplane, even though the single-place version has a slightly smaller powerplant. The FAA also notes that a flight instructor must endorse a student pilot for solo flight in the actual make and model aircraft in which the student pilot will conduct flight operations. Except for this change the final rule is adopted as proposed.

Section 61.87(d), Maneuvers and procedures for pre-solo flight training in a single-engine airplane; § 61.87(e), Maneuvers and procedures for pre-solo flight in a multiengine airplane; and § 61.87(f), Maneuvers and procedures for pre-solo flight training in a helicopter.

The FAA proposed to revise existing requirements. It also proposed to use the term ''slow flight'' in place of the previously used term ''minimum controllable airspeed.'' Details of the maneuvers and procedures to be performed by students would be established through the appropriate practical test standards. The requirement for training on stall entries and recoveries was inadvertently omitted from proposed paragraph (d).

Comments: AOPA states that proposed § 61.87 (d)(9) and (e)(9) could hurt the long-term safety record of general aviation because the requirement for flight at minimum controllable airspeed has been replaced with ''slow'' flight. AOPA points to the FAA's definition of slow flight as 1.2 times the stall speed of the aircraft, which is only marginally slower than the standard approach speed of 1.3 times the stall speed. According to AOPA, stall recognition and handling characteristics of an aircraft at minimum controllable airspeed constitutes ''critical knowledge'' for a student pilot and should not be removed.

AOPA also states that the deletion of requirements for pre-solo stall recovery training is a mistake. Individual commenters echo this view, stating that this omission appeared to be inadvertent.

HAI cites proposed § 61.87(d) and (f) and asks whether these procedures for supervised pilot in command training are intended for solo practice. The commenter believes that student pilots should not perform emergency procedures without an instructor in the aircraft.

FAA Response: The existing requirement for training on stall entries and recoveries was inadvertently omitted from the proposal. A requirement for ''stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and recovery from a full stall'' has been inserted into paragraphs (d) and (e) of the final rule. AOPA's concerns regarding the deletion of flight at minimum controllable airspeed were reviewed, but the change of terminology to ''slow flight'' was made to provide the FAA with flexibility in determining which specific tasks should be performed in the area of operation. This is issue discussed in section IV,H. Moreover, the FAA has determined that the stall training requirement of the final rule ensures that the student obtains the necessary practice in stall recognition and handling characteristics. HAI's concerns also are noted; however, this section's requirements are explicitly listed as pre-solo training, therefore, these maneuvers would be conducted with an authorized instructor. Except for these changes, the final rule is adopted as proposed.

Section 61.87(g), Maneuvers and procedures for pre-solo flight training in a gyroplane; and § 61.87(h), Maneuvers and procedures for pre-solo flight training in a powered-lift.

In proposed paragraph (g), the FAA deleted provisions for single-seat gyroplanes for reasons discussed in the analysis of § 61.45. Proposed paragraph (h) established student pilot training for the proposed powered-lift category rating. For the same reasons discussed in the response concerning the final rule's paragraphs (d), (e), and (f), a requirement for flight training on stall entries and recoveries was added to paragraph (h). Except for the changes discussed, the final rule is adopted as proposed.

Section 61.87(i), Maneuvers and procedures for pre-solo flight training in a glider.

Proposed paragraphs (i) and (j) established student pilot training for the proposed nonpowered class ratings and for the powered class ratings under the glider category, respectively. No substantive comment directly addressed the proposed paragraph (i). As discussed in section IV,F, the FAA is not proceeding with the separation of the glider category into nonpowered and powered classes. Therefore, the final rule consolidates the proposed separate requirements for gliders into one paragraph. The language of the final rule makes provisions for powered gliders as appropriate, without discussing them as a separate class. Except for these changes, the final rule is adopted as proposed.

Section 61.87(j), Maneuvers and procedures for pre-solo flight training in an airship; and § 61.87(k), Maneuvers and procedures for pre-solo flight training in a balloon.

The FAA proposed minor editorial and reformatting changes. No substantive comments were received. The references to ''vents'' and ''deflation valves'' were added to paragraph (k) of the final rule. Except for these changes, the final rule is adopted as proposed.

Section 61.87(l), Limitations on student pilots operating an aircraft in solo flight; § 61.87(m), Limitations on student pilots operating an aircraft in solo flight at night; and § 61.87(n), Limitations on flight instructors authorizing solo flight.

The proposed paragraphs set forth the limitations on the exercise of student pilot flight privileges.

Comments: HAI objects to the language regarding limitations on flight instructors authorizing supervised pilot in command flight. HAI interprets the rule as requiring that training be completed in the specific aircraft. HAI states that the rule should not require training in a specific aircraft, but merely in the same make and model of aircraft to be flown during supervised pilot in command. The commenter also contends that the rule can be interpreted to mean that an instructor must be physically present to authorize the student pilot to perform each supervised pilot in command flight. HAI recommends modifying the rule to allow supervised pilot in command flight as long as all of the requirements have previously been met and the student's pilot logbook is properly endorsed.

AOPA opposes the proposed requirement that an instructor who authorizes supervised pilot in command flight must endorse the student pilot's certificate every 90 days. AOPA states that updating the endorsement would require the issuance of additional student pilot certificates simply to accommodate recordkeeping functions. The commenter contends that an instructor should be able to keep the student current by endorsing only the logbook within the preceding 90 days. One commenter echoed AOPA's objections.

FAA Response: The FAA agrees with part of HAI's concern over possible

misinterpretation of the requirement that training be conducted in a specific aircraft, therefore, the language in the final rule for the paragraph has been changed from ''in the aircraft'' to ''in the make and model of aircraft''. Additionally, in accordance with the revision made to § 61.87(c)(2) to permit a student pilot to demonstrate flight proficiency in a make and model of aircraft similar to that in which the student pilot will conduct solo flight, the FAA has revised § 61.87(n)(1)(i) to permit an instructor to authorize a student pilot to perform a solo flight if the instructor has given the student pilot training in either ''the make and model of aircraft or a similar make and model of aircraft in which the solo flight is to be flown''.

The FAA also concurs with AOPA's objection to the requirement that certificates be endorsed every 90 days. The final rule has therefore been revised to only require additional 90-day solo endorsements to be recorded in the logbook. The paragraphs pertaining to powered and nonpowered glider class ratings have been restructured because the FAA is not proposing separate powered glider and nonpowered glider ratings as discussed in section IV,F. Except for these changes, the final rule is adopted as proposed.

Section 61.89 General limitations.

The FAA proposed minor editorial changes to this section in Notice No. 95–11. No substantive comments to this section were received; the section is adopted as proposed.

Section 61.93 Solo cross-country flight requirements.

In Notice No. 95–11, the FAA proposed to revise and reformat § 61.93. In the proposal, the title was changed from ''Cross-country flight requirements (for student and recreational pilots seeking private pilot certification)'' to ''Supervised pilot in command cross-country requirements for student pilots''. The FAA proposed to change the term ''solo'' to ''supervised pilot in command'' to reflect the proposed deletion of the term ''solo'' as discussed in the analysis of § 61.1.

The most significant change proposed was the establishment of separate supervised pilot in command cross-country maneuvers and procedures for the airplane single-engine rating, airplane multiengine rating, rotorcraft helicopter rating, rotorcraft gyroplane rating, nonpowered glider rating, powered glider rating, lighter-than-air category airship rating, lighter-than-air category balloon rating, and powered-lift rating.

In proposed paragraph (a), the FAA deleted the existing provision that a student pilot may land at an airport other than the airport of takeoff, in an emergency. This provision already exists in § 91.3, ''Responsibility and authority of the pilot in command.''

Proposed paragraph (b)(1) clarified the language of the provision for performing supervised pilot in command flights to and from an airport within 25 nautical miles of the airport from which the flight originated.

Proposed paragraph (b)(2) clarified the provision for performing repeated supervised pilot in command cross-country flights that are no more than 50 nautical miles.

Proposed paragraph (c) clarified existing requirements for endorsements on the student pilot's certificate and in the student pilot's logbook. The requirement for an endorsement on the student pilot certificate would not apply to a pilot with a pilot certificate who seeks privileges in another aircraft category, because a certificated pilot would not hold a student pilot certificate.

Provisions were added in proposed paragraph (d) for the use of radios for VFR navigation and two-way communications, procedures for diverting to alternate airports, and windshear avoidance.

Comments: One commenter states that the requirements of § 61.93(a)(1) for supervised pilot in command cross-country flight should be clarified for balloon operations, which do not originate at an airport and do not land at the departure point.

HAI asks whether the cross-country endorsement section of the student pilot certificate will be revised to allow an endorsement for aircraft make and model as required in proposed paragraph (c)(1), in light of the fact that the current requirement is merely for an endorsement of aircraft category. AOPA also questions the make and model specific requirement of paragraph (c)(1), stating that an endorsement for category alone should be sufficient, since the proposed logbook endorsement of paragraph (c)(2) would accommodate the make and model endorsement. According to AOPA, the proposal would force the FAA to issue more student certificates simply for recordkeeping functions. HAI questions whether the logbook endorsement in proposed paragraph (c)(2) for supervised pilot in command cross-country flight is necessary in light of the requirement for the certificate endorsement.

Individual commenters objecting to both proposed paragraphs (c)(1) and (c)(2) shared the associations' views. One instructor states that the ''make and model'' requirement could be a hardship if a flight school changed equipment in the middle of a student's training, because the student would have to repeat pre-solo maneuvers and cross-country training. The commenter requests retaining the existing rule's reference to aircraft ''category'' only. Another commenter states that the privilege of signing for another flight instructor should be retained under proposed § 61.93 (c)(2)(ii) and (c)(2)(iii). Another commenter requests that proposed § 61.93 contain more useful guidance regarding what is required for a glider pilot to make a cross-country flight.

FAA Response: As discussed in the analysis of § 61.1, the FAA has decided not to adopt the term ''supervised pilot in command.'' Regarding the comment on the possible terminology problem in paragraph (a) with respect to balloons, the FAA points out that it has decided to delete solo cross-country requirements for balloons in the final rule as discussed in the analysis of § 61.107. Upon reviewing the comments of AOPA, HAI, and individuals regarding cross-country endorsements, the FAA has decided to replace the words ''make and model'' with ''category'' in paragraph (c)(1) of the final rule, while retaining them for logbooks in paragraph (c)(2). The intent of the change to the existing rule is to clarify that a student must be properly authorized to conduct not just all solo flights, but also all solo cross-country flights, in a specific make and model.

For reasons similar to those discussed in the section-by-section analysis of § 61.87, the FAA also has modified § 61.93(a)(2)(iii) to permit the pre-solo flight maneuvers and procedures required by § 61.87 to be accomplished in either the make and model of aircraft or a similar make and model of aircraft for which solo cross-country flight privileges are sought. Except for these changes, the final rule is adopted as proposed.

Section 61.95 Operations in Class B airspace and at airports located within Class B airspace.

The FAA did not propose any substantive changes to this section in Notice No. 95–11. This section is adopted as proposed with only minor editorial changes for consistency with other sections of this proposal.

Subpart D—Recreational Pilots

Section 61.96 Applicability and eligibility requirements: General.

The proposed section sets forth the provisions that are applicable to recreational pilot certificates and ratings. The proposal added a new § 61.96a titled ''Eligibility requirements: General.'' The proposal required applicants to be able to write in the English language and eliminated the provision in the existing rule that permitted applicants who could not read, speak, or understand the English language to receive a certificate with the operating limitation deemed necessary by the Administrator. The proposal also deleted the requirement for recreational pilots to hold a medical certificate. The proposal required an applicant to receive an endorsement from the ground instructor or flight instructor who gave the applicant training or reviewed the applicant's home-study course. This endorsement would state that the applicant was prepared for the knowledge test.

Comments: Approximately 1,100 comments address the FAA's proposals regarding the recreational pilot certificate. The overwhelming majority of the commenters agree with the proposal, many of them requesting expeditious implementation of the final rule with regard to the recreational pilot provisions of Notice No. 95–11, without necessarily waiting for other parts of the proposal. Fewer than 20 commenters disagree. Most of the commenters state that the proposal will stimulate interest in flying by making recreational flying more affordable and by eliminating paperwork. They also state that the proposals will boost the general aviation industry without adversely affecting safety.

EAA and NAFI request that the FAA expeditiously review comments on Notice No. 95–11 and move to final rule on the recreational pilot provisions. The commenters note the success of the new Canadian recreational pilot's permit, which they contend has increased training activity and financially benefited FBOs and flight instructors. The United States Ultralight Association, Inc., also states that the proposed changes will benefit general aviation.

However, another commenter, who identifies himself as a flight instructor, objects to the concept of a recreational pilot certificate. He states that it allows inadequately trained pilots to fly.

FAA Response: The FAA has modified the final rule to address the commenters' concerns regarding the unintended effect in the proposed rule change that would prevent deaf pilots and pilots with other medical conditions that have a command of the English language from obtaining a recreational pilot certificate. The English language requirement is further discussed in section IV,G. Although the FAA notes the positive response to the proposal regarding medical self-evaluation by persons exercising recreational pilot privileges, the FAA has decided not to adopt the proposal for reasons discussed in section IV,A of this preamble. In the final rule, medical certificate requirements associated with recreational pilot eligibility and privileges are contained in § 61.23. Proposed § 61.96 was integrated with proposed § 61.96a.

Section 61.97 Aeronautical knowledge.

The FAA proposed additional aeronautical knowledge requirements, including ground training on windshear avoidance, aeronautical decision making and judgment, and the preflight actions found in § 91.103.

Comments: EAA favors the inclusion of windshear, and aeronautical decision making and judgment in the training requirements. EAA and NAFI oppose requirements that mandate training regarding how to plan for alternatives if the flight cannot be completed and possible air traffic delays are encountered. NAFI comments that recreational pilots are unlikely to encounter the need for such training.

AOPA and GAMA support instruction in windshear avoidance, aeronautical decision making, and preflight action in the aeronautical knowledge requirements for recreational pilots. However, AOPA cannot accept the additional training requirements without a description of what they are and how they will be implemented.

In addition, AOPA questions the proposed requirement for training and instruction in planning for air traffic delays because recreational pilots are not permitted to fly in airspace requiring two-way radio communications.

ALPA, GAMA, and NAFI support the requirements for training in aeronautical decision making as do many of the individual commenters. SSA states that including knowledge of decision making and judgment techniques in the training cycle may be a valuable tool in reducing accidents. GAMA and NAFI also support the addition of windshear training requirements. SSA notes that windshear training has several facets including windshears caused by fronts, microbursts, and obstructions. SSA believes that the glider community is aware of the dangers associated with windshear. Most individual commenters also support the proposed requirements for windshear training.

AOPA favors the concept of teaching aeronautical decision making and believes there should be a definition of what must be taught and to what standards. The commenter encourages the FAA to elaborate on this topic in the preamble to any final rule.

FAA Response: The FAA agrees with commenters who state that recreational pilots are unlikely to encounter air traffic delays, and has modified the requirement for training in traffic delay planning to a more general reference to possible delays. Other terminology and changes were implemented in the final rule as well, including revising the reference to the ''Airman's Information Manual,'' which is now titled the ''Aeronautical Information Manual.''

The FAA strongly believes that training in human factors and aeronautical decision making should be required. Approximately 80 percent of all accidents are related to pilot error. Training in human factors, and aeronautical decision making and judgment may decrease the number of accidents attributable to pilot error, because implementation of similar training in air carrier operations has decreased accident rates. Regarding AOPA's concern on the need for guidance material on aeronautical decision making, the FAA points out that AC No. 60–22, ''Aeronautical Decision Making,'' contains such guidance.

Section 61.98 Flight proficiency.

This proposed section established the areas of operation for all aircraft that are permitted to be operated by a recreational pilot. Several commenters raised concerns regarding the principle behind the proposed areas of operation for all certificates. This issue is addressed in section IV,H.

This section is adopted as proposed, with only minor editorial changes.

Section 61.99 Aeronautical experience.

In Notice No. 95–11, the FAA proposed to change the title of this section from, ''Airplane rating: Aeronautical experience,'' to ''Aeronautical experience.'' Proposed § 61.99 included the aeronautical experience requirements for single-engine airplanes, helicopters, and gyroplanes that are permitted to be operated by recreational pilots. The proposed section also revised the minimum amount of solo time required for a person to be eligible for a

recreational pilot certificate. The proposal established more flexible training requirements that permitted flight instructors to determine the number of hours of training each student pilot requires. However, the minimum number of total hours required to obtain a recreational pilot certificate remained unchanged.

Comments: EAA favors the reduction in the minimum hours of solo time for recreational pilot certificate applicants. Both EAA and NAFI support the greater flexibility given to flight instructors.

AOPA does not believe that the reduction in the required number of supervised pilot in command hours represents a significant economic benefit to general aviation, because the aeronautical experience requirements for a recreational pilot certificate dictate the need for more than 3 hours of supervised pilot-in-command time. However, AOPA supports the proposal because it stresses the concept of training to a level of proficiency rather than training based on an arbitrary number of hours.

In contrast, GAMA, NATA, and NBAA oppose the reduction in the minimum amount of supervised pilot-in-command time to 3 hours for recreational pilot applicants. These commenters recommend requiring at least 10 hours of supervised pilot-in-command time. GAMA stresses the importance of flight time as sole manipulator of an aircraft to the development of a safe pilot. According to GAMA, such time bolsters a student's confidence, helps the student become self-reliant, and improves a pilot's decision making skills.

FAA Response: The FAA believes the change in the dual and solo time requirements provides instructors with flexibility in determining the amount of solo and dual training required for each student. This change should not compromise safety, because the total number of hours remains unchanged and should encourage increased training and help reduce overall costs. It appears that some commenters misunderstood the proposal, because their concerns implied that the total number of hours would be reduced, which is not the case. Therefore, this section is implemented in the final rule as proposed, with the exception of the changes noted and minor editorial changes.

Section 61.100 Pilots based on small islands.

In Notice No. 95–11, the FAA proposed to change the existing title of this section from ''Rotorcraft rating: Aeronautical experience'' to ''Pilots based on small islands.'' The proposed aeronautical experience requirements for a rotorcraft category rating were moved to proposed § 61.99. Proposed § 61.100 contained the provisions for pilots based on small islands. These provisions are currently found in § 61.99 of the existing rule.

No substantive comments were received concerning this section. However, the final rule has been modified to restore detailed provisions from the existing rule that were inadvertently omitted from proposed § 61.100.

Section 61.101 Recreational pilot privileges and limitations.

In Notice No. 95–11, the FAA proposed significant revisions to the privileges and limitations for recreational pilots.

In paragraph (a), the FAA proposed to specify the types of operating expenses that a recreational pilot may share with a passenger.

Proposed paragraph (c) deleted the existing restriction that prevents recreational pilots from flying more than 50 nautical miles from an airport where training was received. The paragraph also explicitly permitted such operations, subject to compliance with specific training and endorsement requirements. The proposal to eliminate the 50-mile restriction is discussed in section IV,A.

Proposed paragraph (h) contained a revised version of paragraph (f), maintaining the same basic provisions that are in the existing paragraph, except for changes intended for clarity.

Comments: Many of the comments received on the proposal to codify the sharing of expenses are also directed at similar provisions in proposed § 61.113. Approximately 130 comments address the FAA's proposal to specify the expenses a private pilot may share with passengers. Approximately 95 percent of the comments oppose the proposal, while the remainder either are in favor or discuss other aspects of the proposal.

AOPA, EAA, NAFI, and NATA comment that pilots should be able to share operating expenses with passengers, such as aircraft rental costs. AOPA and NATA state that this is currently allowed under the regulations. Although AOPA supports codifying the expenses that can be shared, it believes the proposed rule represents a significant change. According to AOPA, the new rule will likely stifle activity at flight schools and FBOs. SSA also supports including the cost of aircraft rental in the expenses that can be shared. According to SSA, a glider uses minimal fuel but has direct costs for tows and glider rentals that can be specifically documented.

GAMA and HAI also recommend adding operating costs to the list of expenses that may be shared. GAMA contends that individuals currently are allowed to divide the rental costs of an aircraft including fuel, oil, airport expenditures, and operating costs.

In its comment, NBAA states that proposed § 61.113(c) is too prohibitive and could add costs for the private pilot. The commenter states that the proposal fails to take into account the potential added fees that general aviation may face in the future. NBAA recommends deleting all the language after the word ''passengers.''

Most of the individual commenters who oppose the proposal also point out that for pilots who rent aircraft it may be difficult to isolate the fuel, oil, and airport expenses from other expenses. They state they should be permitted to share rental expenses. Another commenter states that for aircraft that are not rented, provisions should be made for sharing the cost of the ''engine reserves'' (i.e., a pro-rated allotment per hour toward engine overhaul cost). A commenter points out that the definition would preclude pilots of gliders from sharing expenses. Another commenter states that there is no reason to require that expenses be shared equally, if either the pilot or a passenger wants to pay a greater share.

Some commenters also request additional privileges for recreational pilots, subject to appropriate training and flight instructor endorsement. One of the key additional privileges cited in the comments—requested by approximately 210 commenters—is flight into airspace requiring communications with ATC, such as Class C and Class D airspace. EAA supports permitting recreational pilots to obtain an endorsement to enter Class D airspace because many areas do not have nontowered airports within a reasonable distance. Other commenters state that often a pilot's home base or needed maintenance facilities are in Class D airspace areas, or there may be safety reasons for communicating with ATC. They also cite the possibility of pilots with higher certificates and commensurate training exercising the privileges of recreational pilots. Commenters also seek to expand recreational pilot privileges to include operation of aircraft with more than 180 horsepower and retractable landing gear and night flying. EAA states that recreational pilots should be able to obtain an endorsement for amphibious operations because many newly produced, very light aircraft are

amphibious. Commenters also mentioned demonstration flight for prospective aircraft purchasers. However, several commenters suggest setting the limitation at 2,400 pounds gross weight, with 180 horsepower or less, which is not ''complex.'' One commenter asks how the FAA justifies limiting a four-place aircraft to one passenger for recreational pilots.

Others request raising the ceiling of permitted recreational pilot operations, stating that the limitation of 10,000 feet MSL or 2,000 feet AGL, whichever is greater, is too low for mountain areas. Some commenters suggest alternative privileges and limitations not based on the recreational and private pilot certificates.

FAA Response: The FAA inadvertently omitted ''aircraft rental fees'' from the list of expenses that private and recreational pilots may share. This is current FAA policy. Therefore, § 61.101(a) is appropriately modified in the final rule. In response to those commenters who want additional operating costs shared, only direct operating and rental expenses may be shared. To avoid a pilot receiving compensation for a flight, indirect operating costs, such as maintenance expenses, are not permitted to be shared. In response to the comment regarding the equal sharing of expenses, the FAA has determined that a pilot may not pay less than the pro rata share of operating expenses. The rationale is that if pilots pay less, they would not just be sharing expenses but would actually be flying for compensation or hire. The rule has been modified accordingly.

Proposed paragraph (h) is modified and a new paragraph (i) is added to maintain provisions of the existing rule. The reference to paragraph (d) is removed from paragraph (h). Paragraphs (h) and (i) address only operations at night or in airspace requiring communication with ATC. The phrase ''for the purpose of obtaining an additional certificate'' also is added to this paragraph to indicate that this privilege is only available to a recreational pilot seeking an additional certificate.

In response to the comments requesting expansion of the recreational pilot privileges, the FAA acknowledges these concerns, but has determined that these requests for changes to existing regulations are beyond the scope of this rulemaking.

Apart from these changes and various editorial changes, the final rule is adopted as proposed.

Subpart E—Private Pilots

The proposed establishment of separate subparts for student pilot certificates and recreational pilot certificates required the regulations pertaining to private pilot certificates and ratings to be moved from subpart D to subpart E.

Section 61.102 Applicability.

The FAA did not propose any substantive changes for this section, nor were any substantive comments received. The final rule is adopted as proposed.

Section 61.103 Eligibility requirements: General.

The FAA proposed to revise this section and include new eligibility requirements for private pilot applicants.

In proposed paragraph (b), the FAA added a requirement that an applicant be able to write in the English language. In addition, all applicants would have been required to meet the English language requirements, eliminating the existing provision under which an applicant who cannot read, speak, and understand the English language may receive a certificate with an operating limitation, as deemed necessary by the Administrator.

In proposed paragraph (c), the language pertaining to the medical requirements for applicants who desired a rating in a glider or balloon was clarified.

Proposed paragraph (d) required an applicant to specifically receive an endorsement from the ground instructor or flight instructor who gave the applicant training or reviewed the applicant's home study, certifying that the applicant is prepared for the knowledge test.

Proposed paragraph (h) required an applicant to meet the proposed aeronautical experience requirements for the category and class rating sought, before applying for the practical test.

Comments: Most of the substantive comments received regarding this section related to paragraph (a), especially the possible discriminatory effect of the change in English language proficiency requirements. For a discussion of these comments and the FAA's response, see section IV,G. Some commenters objected to proposed paragraph (c) regarding the revised language pertaining to the medical requirements for pilots of gliders and balloons, interpreting them as new requirements.

FAA Response: For reasons discussed in section IV,G, the final rule includes language restoring the option for the Administrator to place an operating limitation on an applicant's pilot certificate, waiving the applicant's English language requirements on medical grounds. In addition, the language on medical requirements for private pilots is deleted from this section and placed in § 61.23. This topic is discussed in the analysis of § 61.23. The FAA also made other minor editorial and formatting changes to this section of the final rule.

Section 61.105 Aeronautical knowledge.

The FAA proposed to establish aeronautical knowledge requirements that are applicable to applicants for all private pilot certificates. The FAA also proposed to add aeronautical knowledge requirements, including ground training on additional subjects such as windshear avoidance, aeronautical decision making and judgment, and the preflight actions found in § 91.103.

Comments: GAMA and NAFI support the inclusion of training on windshear avoidance, aeronautical decision making, and preflight actions in the aeronautical knowledge requirements for private pilots.

AOPA also supports such training; however, AOPA cannot accept additional training requirements without a description of what they are and how they will be implemented. AOPA also questions the proposed requirement in § 61.105(b)(12) for training and instruction in planning for air traffic delays because such training is more appropriate for commercial, instrument, and ATP applicants.

FAA Response: The FAA agrees with commenters who state that private pilots are less likely to encounter air traffic delays, and has modified the requirement for training in traffic delay planning to a more general reference to possible delays.

The FAA strongly believes that training in human factors and aeronautical decision making should be required. Approximately 80 percent of all accidents are related to pilot error, and training in human factors, and aeronautical decision making and judgment may decrease the number of accidents attributable to pilot error, because implementation of similar training in air carrier operations has decreased accident rates. Regarding AOPA's concern on the need for guidance material on aeronautical decision making, the FAA points out that AC 60–22, ''Aeronautical Decision Making,'' contains such guidance.

Section 61.107 Flight proficiency.

In this section, the FAA proposed separate and revised areas of operation for the airplane single-engine rating, airplane multiengine rating, rotorcraft helicopter rating, rotorcraft gyroplane rating, glider powered rating, glider nonpowered rating, lighter-than-air airship rating, lighter-than-air balloon rating, and powered-lift rating. In addition, the proposal specifically required applicants for a glider category rating to receive training on launches, approaches, and landings, if applying for a nonpowered class rating; or, takeoffs, landings, and go-arounds, if applying for a powered class rating.

Comments: NAFI comments that proposed § 61.107 clarifies aircraft category and training requirements.

Approximately 30 commenters take issue with the FAA's use of the term ''balloonport'' in the proposed rule. This term is not addressed in proposed § 61.1(a), but as one commenter notes, the term is used in proposed §§ 61.107, 61.127, and 61.187. Two commenters state that the term is known principally as a commercial name or a proprietary name for a dealership of one brand of balloon. Commenters ask that another term be defined and used, such as ''launch and landing field'' or ''launch and landing site.'' Commenters note that balloonists use fields, parks, or airports for their operations, and the term used should not be restrictive as to the takeoff or landing location.

FAA Response: In response to commenter concerns, the term ''balloonport'' was replaced with the term ''airport'', and the term ''lift offs'' was replaced with the term ''launches''. The FAA also is not proposing separate flight proficiency requirements for powered and nonpowered gliders. This issue is discussed in section IV,F.

Section 61.109 Aeronautical experience.

The FAA consolidated all aeronautical experience requirements for private pilots in proposed § 61.109. The FAA proposed to change the title of this section from ''Airplane rating: aeronautical experience'' to ''Aeronautical experience'' to reflect the consolidation of these requirements.

The FAA also proposed separate aeronautical experience requirements for each aircraft category and class rating. An applicant seeking a single-engine or multiengine airplane rating would be required to meet the aeronautical experience requirements in a single-engine airplane, and an applicant for a private pilot multiengine rating would be required to meet these requirements in a multiengine airplane. The FAA also proposed revisions to the aeronautical experience requirements for private pilots by establishing more flexible training requirements for private pilot applicants and integrating the concept of supervised pilot in command into specific aeronautical experience requirements. The proposal decreased the amount of solo time an applicant would be required to possess prior to obtaining a certificate, added additional night-flight training requirements, decreased the length of required cross-country flights, and increased instrument flight training requirements. The proposal also established aeronautical experience requirements for a powered-lift rating. The minimum number of total hours required to obtain a private pilot certificate remained unchanged.

Comments: Approximately 140 comments address issues related to private pilot training requirements proposed in Notice No. 95–11.

AOPA comments that, although it believes 5 hours of supervised pilot in command is an excessively low figure, it supports the proposal because it stresses the concept of training to a level of competency rather than training consisting of an arbitrary number of hours. AOPA also supports the reduction in the distance requirement for the solo cross-country flight from 300 nautical miles to 100 nautical miles. AOPA believes that there is no merit in requiring three takeoffs and three landings to a full stop at an airport with an operating control tower, and that this proposed requirement will constitute a burden in cases where a towered airport is not available within a reasonable distance.

In its comment, AOPA expresses concern about § 61.109(a)(2)(v), which proposes supervised pilot in command training requirements in multiengine aircraft for the issuance of a private pilot certificate with a multiengine rating. AOPA states that it is unaware of any insurance company that will insure, or an FBO that will allow, a pilot to fly solo in a multiengine aircraft without a multiengine rating. According to AOPA, if the intent of the provision is to require an applicant to log supervised pilot in command flight while the sole occupant of the aircraft, this will result in a serious obstacle to multiengine training. The commenter states that this proposal is an example of how the change of terminology from ''solo'' and ''dual'' to ''training time'' and ''supervised pilot in command'' results in confusion.

SSA believes that the proposal to allow tailoring of instruction to more closely match a student's needs emphasizes dual instruction over solo flight. According to SSA, solo time reinforces the principle of responsibility that is so important to safe flight and provides the student with an opportunity to find areas of weakness. SSA comments that two supervised pilot in command flights, or even 5 hours of supervised pilot in command flight, is inadequate. SSA urges the FAA to recognize the importance of supervised pilot-in-command time. The commenter also opposes the flight time requirements for a glider rating set forth in § 61.109(b)(2), and states that they are ''oppressive.'' SSA contends that if these requirements are adopted many individuals who are planning to learn to fly will not do so because of the increased costs.

NAFI also supports the reduction in cross-country distance requirements and the addition of night cross-country training. NAFI, however, disagrees with the reduction in solo flight time requirements. According to the commenter, applicants with no solo experience should be required to obtain 15 hours of solo time before carrying passengers. However, NAFI recommends developing a system to credit solo time in flight vehicles ''other than certificated aircraft,'' such as ultralights, to satisfy part 61 requirements.

NBAA states that the proposed reduction in supervised pilot-in-command time is excessive and recommends a minimum of 10 hours. HAI also expresses concern about the reduction in this requirement because it will result in private pilots with a low level of experience.

NATA comments that 5 hours of supervised pilot-in-command time is insufficient to build a private pilot's confidence and recommends that at least 15 hours be required. NATA further states that a single supervised cross-country flight of 100 nautical miles is inadequate to acquire cross-country skills. The commenter recommends requiring at least three cross-country flights, including one flight of at least 250 nautical miles with at least one leg of 100 nautical miles.

GAMA opposes the reduction of the minimum supervised pilot-in-command time to 5 hours for private pilots. GAMA feels that flight time as the sole manipulator of an aircraft's controls is critical to the development of a skilled, safe pilot. GAMA agrees with the proposal of NAFI and NATA to require at least 15 hours of supervised pilot-in-command time. GAMA states that, while a minimum number of supervised pilot in command cross-country hours is

not necessary, the number of required flights should be revised to ensure proper training and the fostering of skill and experience. GAMA recommends that the rule require a minimum of three cross-country flights including two flights with a landing point more than 50 nautical miles from the original departure point, and one flight of at least 300 nautical miles, with landings at a minimum of three points, one of which should be at least 100 nautical miles from the original departure point. GAMA states that because a disproportionate number of accidents involving private pilots occur at night, requiring a dual, night cross-country flight would add to the margin of safety.

HAI points out that meeting the cross-country flight requirement for helicopters does not require a flight of 50 miles between takeoff and landing points, and that the cross-country definition in proposed § 61.1a(e), which specifies 50 miles, is not consistent with this provision.

Some individual commenters also disagree with changes to the proposed supervised pilot in command cross-country requirement, advocating retention of the existing requirement for 10 hours of cross-country time which includes at least one long cross-country flight. Some commenters state that the proposed supervised pilot in command experience hour requirement is too low.

One commenter suggests that the requirement for one 100-nautical-mile cross-country flight could be impractical in certain areas during certain times of the year. The commenter agrees with the proposal for 3 hours of instrument training for private pilot applicants. Another commenter opposes the proposed requirement in § 61.109 for 3 hours of instrument dual instruction in an airplane for private pilot training.

Individual commenters take issue with the night flight proposals; some state that night flight in a single-engine airplane is too hazardous. At least one commenter believes that the night cross-country flight training requirement proposed under § 61.109(a)(1) would not require that a flight instructor be on board, and suggests that a flight instructor be required. Another opposes the night cross-country requirement for single-engine airplanes completely, while another advocates reducing the requirement from 100 nautical miles to 50 nautical miles.

GAMA, NAFI, and NATA support the proposed night cross-country requirements and state that safety will be enhanced by the adoption. NATA also approves of the proposed night takeoff and landing requirements and states that student confidence would be increased if this proposal were adopted. GAMA states that the requirement would provide an important educational experience by exposing the pilot to a much broader flight environment under a supervised situation.

AOPA generally supports placing greater emphasis on night training for private pilot applicants and states that the proposed night cross-country flight training requirement will increase safety. The commenter, however, requests clarification concerning the term ''duration'' and asks whether the cross-country flight is intended to be 100 miles total (50 miles out and 50 miles return) or if the flight is to be 100 miles from the point of departure (200 miles total). AOPA supports a 100-mile round trip because the longer flight would be difficult to achieve in the summer months. The commenter would oppose the proposal if it required a flight of 200 miles total distance.

Some commenters suggest raising the minimum flight hour requirements for the private certificate with a balloon rating. One commenter suggests that 15 hours rather than 10 hours should be required because much time is spent reviewing and relearning, apparently due to weather-caused interruptions in training. Two commenters state that the requirements of proposed § 61.109(d)(2)(i) for two flights within 60 days of application for a private balloon rating are excessive, because of the nature of balloon operations and scheduling difficulties.

NAFI opposes the new requirements under § 61.109(c) for airship instrument training because some ''hot air blimps'' currently are being built as ultralight and experimental aircraft, and these aircraft do not have sufficient electrical power for IFR instrumentation. NAFI states that the proposal would effectively eliminate all private pilot training for ''hot air blimps,'' and pilots would be forced to operate the aircraft as ultralights, possibly without the benefit of training from a certificated flight instructor. NAFI comments that this would not advance safety. One individual commenter also states that the instrument training proposed for private pilot certification under § 61.109(c) should not be required because many airships are not equipped for instrument flight.

NAFI opposes the new night flight requirements of proposed § 61.109(c) for airship training. NAFI states that these aircraft do not have sufficient electrical power for navigation lights, in some cases.

FAA Response: The FAA believes the change in the composition of dual and solo time, within the total number of hours required for each certificate, provides instructors with flexibility in determining the amount of dual and solo training required for each student. The FAA has decided not to adopt the concept of supervised pilot in command as set forth in Notice No. 95–11, and has therefore replaced references to ''supervised pilot in command'' time with ''solo'' time.

The proposal does not compromise safety because the total number of hours required for the issuance of a private pilot certificate remains unchanged. The rule should encourage increased training and help reduce overall costs. It appears that some commenters misunderstood the proposal, because their concerns implied that the total number of hours would be reduced, which is not the case. The FAA has, however, increased solo flight time requirements and solo cross-country flight distance requirements in the final rule in order to meet the minimum requirements under Annex 1 to the Convention on International Civil Aviation.

The FAA believes that night cross-country training should be required for private pilot applicants because a private pilot may later be placed in circumstances where the pilot may inadvertently fly at night, without appropriate night training. This issue was identified as an area of concern in the FAA's Job Task Analysis. Increased night flight training will reduce the issuance of certificates with a night flying limitation, as well the associated administrative costs to the FAA in reissuing such certificates when the limitation is removed. In response to AOPA's request, the FAA has clarified the cross-country requirements in this section by replacing the word ''duration'' with the term ''total distance.''

Regarding the proposal for required solo flight in multiengine aircraft for pilots seeking that rating, the FAA is convinced by the commenters' arguments and has modified the final rule to require that an applicant accomplish solo flight in an airplane. This would allow an applicant for a multiengine rating to accomplish solo flight time requirements in a single-engine airplane. The FAA believes that a similar problem to that presented by the commenters could arise for powered-lifts, and has made a similar modification to the regulations applicable to those aircraft requiring that solo flight time be accomplished in an airplane or powered-lift. The FAA recognizes HAI's concern regarding an inconsistency with the definition of ''cross-country,'' and has revised the

cross-country requirements for rotorcraft accordingly.

Currently the FAA requires training within 60 days of application for a practical test in a balloon. The FAA, in order to clarify what is meant by ''training,'' is requiring a minimum of two flights within 60 days of application. The FAA considers this requirement reasonable to ensure proper preparation for the practical test.

The FAA disagrees with NAFI regarding night flight requirements for airships, and finds that the majority of airships do have sufficient electrical power to operate at night. The FAA believes that night flight training should be required for airships as these aircraft currently operate at night in the NAS. Therefore, the FAA will require night training in airships.

To address commenters' arguments against required instrument training in airships that may not be equipped for instrument flight, the FAA has modified the requirements to state only that instrument training is required, without referring specifically to airships.

The FAA also has modified the proposed requirements for the issuance of a glider rating to be consistent with the decision not to establish separate class ratings for powered and nonpowered gliders. Additionally, the FAA has included provisions as set forth in Amendment No. 61–100, which permit credit to be given for the use of an approved flight simulator or approved flight training device.

Section 61.110 Night flying exceptions for private pilot certification.

The FAA proposed to establish the night flying exceptions for private pilot certification in § 61.110.

In proposed paragraph (a), an applicant with a medical restriction prohibiting the operation of an aircraft at night would not be required to meet the night flight training requirements and would be issued a certificate with a limitation prohibiting night flying.

It was proposed in paragraph (b) to permit an applicant who accomplishes flight training in Alaska to have 12 months after the issuance of the applicant's temporary airman certificate to comply with the night flight training requirements. Alaska is unique in that 6 months out of the year there is limited nighttime. However, under proposed paragraph (b)(2), an applicant who receives flight training in Alaska and is unable to accomplish the night flying training required by proposed § 61.109 would be issued a temporary pilot certificate for only 12 calendar months, with a limitation ''night flying prohibited.'' That person would be required to comply with the night-flying requirements for the private certificate within the 12-calendar-month period after issuance of the certificate. If that person did not comply with the requirements within that period, the certificate would be suspended until the person complied the requirements.

Paragraph (b)(3) was proposed to explain the night flying experience, endorsement, and practical test portion requirements of § 61.109 that must be met in order to have the ''night flying prohibited'' limitation removed.

Comments: AOPA states that, while it supports the added flexibility of the night flying exception rule, it opposes the language of § 61.110(b)(2) that would suspend the airman's certificate if the pilot does not complete the night training requirements within 12 calendar months. AOPA states that the FAA certificates numerous pilots each year with permanent night flight restrictions, and there is no reason why Alaskan airmen should be singled out for suspension of their certificates simply because they fail to remove their night flight restrictions.

FAA Response: The FAA points out that a change in the proposed and final rules to § 61.109 will disqualify all applicants from being issued certificates without meeting night flying requirements, unless they qualify for an exception under § 61.110. Therefore, the 12-month limit of § 61.110 does not discriminate against Alaskan airmen, but rather allows them a special privilege. In the final rule, the 12-month limitation remains, but the FAA has deleted language referring to the issuance of a 12-month temporary certificate, because existing FAA temporary certificates are valid for 120 days. The FAA has also added a provision that a person seeking to obtain this exception must both receive the flight training for the certificate and reside in the State of Alaska.

By deleting the exception for pilots who have night flying restrictions due to medical conditions, these pilots will now be required to have 3 hours of night flight training. However, the certificates of such pilots will be issued with an operating limitation prohibiting night flying. The FAA has determined that safety will be enhanced because this requirement will reduce the likelihood of pilots later being placed in circumstances where they may be required to engage in flight at night without appropriate night training.

Section 61.111 Cross-country flights: Pilots based on small islands.

In Notice No. 95–11, the FAA only proposed minor editorial changes to this section. No substantive comments were received. The final rule has been modified to restore detailed provisions from the existing rule that were inadvertently omitted in the proposed rule.

Section 61.113 Private pilot privileges and limitations: Pilot in command.

In Notice No. 95–11, the FAA proposed to include the provisions of existing § 61.118 in proposed § 61.113. The revised aeronautical experience requirements for a rotorcraft category rating found in existing § 61.113 were included in proposed § 61.109.

Proposed paragraph (c) specified the flight operating expenses that a private pilot may share with passengers. A more detailed discussion of this proposal, including comments and FAA response, is addressed with regard to the similar proposed change to § 61.101(a).

Proposed paragraph (d) modified the requirements for participation in an airlift sponsored by a charitable organization.

In proposed paragraph (e), private pilots were permitted to receive reimbursement for expenses incurred while performing search and location operations for law enforcement agencies or other organizations that conduct these operations.

Proposed paragraph (f) permitted a private pilot who met the requirements of proposed § 61.69 to act as pilot in command when towing gliders.

Proposed § 61.113 eliminates specific provisions permitting a salesman who has logged at least 200 hours to demonstrate an aircraft in flight to a prospective buyer.

Comments: The commenter's opposition to the proposed paragraph (c) definition of operating expenses that may be shared is discussed in the analysis of the proposed provision of § 61.101(a).

With respect to proposed paragraph (e), the National Headquarters for the Civil Air Patrol (CAP) states that the proposed rule fails to include maintenance expenses as reimbursable for pilots flying humanitarian-type missions, and that the rule incorrectly assumes that such activity is always under the direction of law enforcement agencies. The commenter states that, depending on the definition of ''airport expenditures,'' the omission of maintenance costs in the definition might require the CAP to continue to operate under an exemption in order to maintain current privileges. The commenter also requests that the rule be modified to account for the agencies, other than law enforcement, for which the CAP often flies missions. These

include the FAA, FEMA, the Red Cross, and State and local Emergency Management Agencies. AOPA supports adding search and rescue operations to the list of operations for which private pilots may receive reimbursement. In contrast, HAI objects to the search and rescue provisions in proposed § 61.113(e). HAI contends that this proposal will only encourage the proliferation of this kind of activity. The commenter believes that these kinds of operations are best dealt with through the exemption process.

SSA approves of proposed § 61.113(f) permitting private pilots who meet the requirements of § 61.69 to act as pilot in command of an aircraft towing a glider. SSA points out that the explanation on page 41207 of the Notice No. 95–11 indicates that the pilot will be able to log this time. SSA suggests that § 61.113(f) be modified to this effect.

FAA Response: In response to objections to the language of proposed § 61.101(a) as well as § 61.113(c), the FAA has decided to add ''rental fees'' to this list of allowable shared expenses in both those sections, as discussed in the analysis for § 61.101(a). This language is therefore added to § 61.113(e) in the final rule. The CAP's concerns regarding types of agencies that conduct search and location missions were noted, and the term ''law enforcement'' has therefore been deleted from paragraph (e)(1) in the final rule.

In response to CAP's comments regarding the omission of any provisions permitting a private pilot to be reimbursed for maintenance costs, the proposed rule did not specifically provide for reimbursement of maintenance costs, and neither does the final rule. Any reimbursement for compensation of maintenance costs will be handled on a case-by-case basis through the exemption process. In addition, CAP commented that the rule be modified to account for agencies other than law enforcement agencies for which it operates. In Notice No. 95–11, the FAA proposed to allow pilots under the direction and control of an ''organization that conducts search and location operations'' to be reimbursed. The FAA has determined that this addresses CAP's concerns and is adopting the final rule as proposed.

In response to HAI's comment that search and location operations should remain under the exemption process, since the early 1980's the FAA has permitted private pilots to perform search and location operations, and has continually reissued those exemptions without any known problems. Provided that pilots comply with the requirements in this final rule, which are identical to the exemption's conditions and limitations, the FAA has codified those conditions and limitations in this final rule.

After further review, the FAA has decided to reinstate the provision allowing a private pilot who is an aircraft salesman and who has at least 200 hours of logged flight time to demonstrate an aircraft in flight to a prospective buyer. The FAA has concluded that these operations would not be ''incidental to business,'' and therefore is reinstating this provision into the final rule.

Section 61.115 Balloon rating: Limitations.

Proposed § 61.115 includes the provisions of existing § 61.119. Also, the provisions of existing § 61.115 were included in proposed § 61.109.

The proposed changes to this section were the classification of balloons as either ''gas balloons'' or ''balloons with airborne heaters,'' and the deletion of references to the terms ''hot air balloon without airborne heater'' and ''free balloon.'' The proposed rule also incorporated the existing operating limitations for a private pilot who performs his or her practical test in a gas balloon as opposed to those who perform the test in a balloon with an airborne heater. The language of the operating limitations specified in this section clarified that a person requesting removal of the current operating limitations from his or her certificate would be required to obtain the required aeronautical experience in the specific type of balloon and receive a logbook endorsement from an instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate that balloon.

No substantive comments were received, and the FAA has incorporated this section into the final rule with only minor editorial changes.

Section 61.117 Private pilot privileges and limitations: Second in command of aircraft requiring more than one pilot.

Proposed § 61.117 includes the provisions of existing § 61.120. No substantive comments were received, and the FAA has adopted this section as proposed.

Subpart F—Commercial Pilots

The proposal to establish separate subparts for student pilot certificates and recreational pilot certificates required the regulations for commercial pilot certificates and ratings to be relocated from subpart E in the existing rule to subpart F in the proposed rule.

Section 61.121 Applicability.

The FAA did not propose any substantive changes for this section, nor were any substantive comments received. The FAA has adopted this section as proposed.

Section 61.123 Eligibility requirements: General.

In Notice No. 95–11, the FAA proposed to revise this section and include new eligibility requirements for commercial pilot applicants.

In proposed paragraph (b), the FAA added a requirement that an applicant be able to write in the English language. In addition, applicants would have been required to meet the English language requirements, eliminating the existing provision under which an applicant who cannot read, speak, and understand the English language may receive a certificate with an operating limitation, as deemed necessary by the Administrator.

In proposed paragraph (c), the FAA proposed that an applicant only hold a third-class medical certificate at the time of the practical test. However, as in the existing rule, a commercial pilot was still required to hold a second-class medical certificate for operations requiring a commercial pilot certificate. Also in the proposed paragraph, the existing medical requirements for applicants who desired a rating in a glider or a balloon were revised.

The FAA proposed in paragraph (d) to require an applicant to specifically receive an endorsement from the ground or flight instructor who gave the applicant training or reviewed the applicant's home-study course, stating that the applicant is prepared for the knowledge test.

Proposed paragraph (i) required an applicant to hold a private pilot certificate, before applying for a commercial pilot certificate.

Comments: AOPA objects to the proposal in § 61.123(i) to require commercial pilot applicants to hold a private pilot certificate as a prerequisite for taking the commercial pilot practical examination for all classes and categories of aircraft. AOPA believes that the requirements for the commercial certificate stand alone as adequate preparation for any applicant for the commercial certificate regardless of whether or not they have ever held another certificate. NAFI supports the proposed requirement for commercial applicants to possess a private pilot certificate. According to the commenter, the time and experience acquired in preparation for the private is necessary for pilots to learn their personal

limitations. An individual commenter states that an instrument rating should be listed in the commercial pilot applicant eligibility requirements of § 61.123.

FAA Response: For reasons discussed in section IV,G, the final rule inserts language restoring the option for the Administrator to place an operating limitation on an applicant's pilot certificate, waiving the applicant's English language requirements based on medical reasons. As discussed in the analysis of § 61.23, the rule has placed all medical requirements into that section.

In response to AOPA's comment, the existing rule requires that persons seeking a commercial certificate in airplanes must either hold a private pilot certificate or meet the requirements for holding a private pilot certificate. A commercial pilot applicant is therefore required to have completed the ground and flight training for a private pilot certificate, and have passed the required knowledge and practical tests before making an application for a commercial pilot certificate. Private pilot applicants are tested on a number of tasks that commercial pilot applicants are not tested on. The FAA wants to ensure that all commercial pilots possess the aeronautical knowledge and flight proficiency that must be mastered by all private pilots. The FAA has determined that the requirement will not be an additional regulatory burden or economic burden because experience has shown that nearly all persons seeking commercial pilot certificates already possess at least a private pilot certificate. In the final rule, other minor editorial and formatting changes to the proposed rule were also made. Except for these changes, the final rule is adopted as proposed.

Section 61.125 Aeronautical knowledge.

The FAA proposed to establish aeronautical knowledge requirements that are applicable to applicants for all commercial pilot certificates.

In proposed paragraph (b), the FAA modified the aeronautical knowledge requirements to include training on additional subjects such as windshear avoidance, and aeronautical decision making and judgment.

Comments: GAMA supports the addition of windshear recognition and avoidance, aeronautical decision making, and night and high-altitude operations to the commercial pilot aeronautical knowledge requirements. GAMA believes that the statement ''including recognition and avoidance of wake turbulence'' was unintentionally omitted and should be included in § 61.125(b)(5). AOPA favors the concept of teaching aeronautical decision making and judgment as part of commercial pilot training, but it cannot accept the proposed requirement without a definition of what must be taught and to what standards. AOPA encourages the FAA to elaborate on the specific nature of this training in the preamble to the final rule.

FAA Response: In response to GAMA's concern regarding the exclusion of training in wake turbulence recognition and avoidance, the FAA notes that this training is required to be provided to all private pilots as specified in § 61.105(b)(7). The rule also requires that all applicants for a commercial pilot certificate possess a private pilot certificate, thereby ensuring that such training has been received. Regarding AOPA's concern on the need for guidance material regarding aeronautical decision making, the FAA points out that AC 60-22, ''Aeronautical Decision Making,'' contains such guidance.

Section 61.127 Flight proficiency.

In Notice No. 95–11, the FAA separated and revised areas of operation the airplane single-engine rating, airplane multiengine rating, rotorcraft helicopter rating, rotorcraft gyroplane rating, glider nonpowered rating, glider category powered rating, lighter-than-air airship rating, lighter-than-air balloon rating, and powered-lift rating.

The proposal specifically required an applicant for a glider category rating to receive training on launches, approaches, and landings if applying for a nonpowered class rating, in proposed paragraph (g); and takeoffs, landings, and go-arounds if applying for a powered class rating, in proposed paragraph (h). No substantive comments in opposition to this proposal were received.

FAA Response: In the final rule, the proposed ''ground reference maneuvers'' were deleted from the areas of operation for the gyroplane rating, because it is not a task that is required to be tested in gyroplanes and was inadvertently included in the proposal. As a result of the FAA's decision not to adopt flight instructor certificates for the lighter-than-air category, as discussed in section IV, C, the areas of operation associated with flight instruction have been added to the required areas of operation for airship and balloon ratings. The FAA also is not adopting separate flight proficiency requirements for powered and nonpowered gliders. This issue is discussed in section IV,F. Apart from these and minor editing changes, the final rule is adopted as proposed.

Section 61.129 Aeronautical experience.

In Notice No. 95–11, the FAA proposed to consolidate all aeronautical experience requirements for commercial pilots in § 61.129. The FAA therefore proposed to change the title of the existing § 61.129 to ''Aeronautical experience.'' Within proposed § 61.129, the FAA organized these requirements by category and class of aircraft.

Proposed paragraphs (a) through (g) listed revised and separate aeronautical experience requirements for the airplane single-engine rating, airplane multiengine rating, rotorcraft helicopter rating, rotorcraft gyroplane rating, glider powered rating, glider nonpowered rating, lighter-than-air airship rating, lighter-than-air balloon rating, and powered-lift rating.

The FAA proposed specific revisions to the aeronautical experience requirements for commercial pilots by establishing more flexible training requirements for commercial pilot applicants and by integrating the concept of supervised pilot in command into the proposed aeronautical experience requirements. The proposal decreased the amount of dual instruction time an applicant would be required to possess prior to obtaining a certificate.

The proposal also established aeronautical experience requirements for a powered-lift rating. The minimum number of total hours required to obtain a commercial pilot certificate remained unchanged.

Within the category-and class-specific paragraphs, where applicable, the FAA revised the existing solo requirements, dual training time requirements, dual cross-country requirements, night flight requirements, and instrument training time requirements, specifying that these requirements actually should be performed in the appropriate category and class of aircraft. Also, two new dual cross-country requirements were added: one for day VFR and one for night VFR flight. For airplanes, the FAA specified that the complex airplane requirements must be class-specific, although a provision was added permitting the use of a turbine-powered airplane in lieu of an airplane that has retractable landing gear, flaps, and a controllable pitch propeller.

Comments: GAMA supports requiring applicants for commercial pilot certificates to have training and demonstrate proficiency in the same category and class of aircraft for which a rating is sought. According to GAMA,

pilots who want to exercise commercial privileges in these types of aircraft will need to undergo this training, so any additional cost is minimal and the margin of safety would be improved.

NATA opposes the requirement in proposed § 61.129 (a)(3)(ii) and (b)(3)(ii) that 10 hours of complex training be class specific in a single-engine airplane and/or a multiengine airplane. NATA believes that due to the high cost of training in complex aircraft, the class-specific requirement greatly increases the financial burden on students without additional training benefits. The commenter specifically states that the prior option available to students of using multiengine time to satisfy single-engine complex time requirements, would be eliminated without justification. The commenter contends that neither aircraft training time nor cross-country time requirements should be class specific.

In its comment, HAI objects to the requirements in proposed § 61.129(a)(4), (b)(4), and (c)(4) for supervised pilot in command on the approved areas of operation listed in § 61.127. The commenter contends that the proposal would require the performance of emergency maneuvers that should not be performed without an instructor. HAI also questions the 5 hours of night supervised pilot in command required in proposed § 61.129(a)(4)(iii), (b)(4)(iii), and (c)(4)(ii). The commenter questions whether it is wise to have private or nonrated pilots flying at night without an instructor. With regard to the commercial helicopter rating, HAI recommends removing proposed §§ 61.129(c)(3)(iii) and 61.129(c)(4)(ii), and combining these sections into a new paragraph (5) that would require 5 hours of flight time in night VFR conditions, which would include: one cross-country flight in a helicopter of at least 2-hours duration and a total straight line distance of more than 50 nautical miles from the original point of departure; and 10 solo takeoffs and landings, each involving an en route phase of flight. Most helicopters are not equipped for instrument flight, and HAI contends that its recommended change will prevent the safety hazard of low-time helicopter pilots and students flying helicopters away from an airport at night without an instructor on board the aircraft.

HAI also addresses the proposed instrument training requirements for helicopters in § 61.129(c)(3)(i). The commenter states that, while the need for instrument training in a helicopter is necessary, the availability of helicopter CFIs is very limited. HAI therefore suggests expanding the types of flight instructors who can provide the required instrument training. The commenter states that most helicopter instructors are not instrument instructors or even instrument rated, and, therefore, a transition period will be necessary to train instructors to give this instruction. In addition, HAI recommends deleting the instrument training requirement for gyroplanes in proposed § 61.129(d)(3)(1) on the grounds that there are no instrument-equipped gyroplanes at this time.

AOPA also references HAI's comments regarding rotorcraft commercial pilot certification, and expresses similar concerns with respect to the instrument requirements for the commercial airship rating. AOPA reiterates concerns similar to those raised in its comments regarding the requirements for supervised pilot in command training for private pilots with multiengine ratings.

Many individual commenters echoed AOPA's concerns regarding supervised pilot in command training for pilots seeking multiengine ratings. These commenters express concerns regarding the safety and ability to obtain insurance coverage for such flights. One commenter states that the proposal contains requirements for training that are not appropriate to the category and class of aircraft specified. Some individual commenters also state that the instrument training in proposed § 61.129(c)(3)(i) should not be required because many helicopters are not equipped for instrument flight. For example, a commenter notes that proposed § 61.129(d)(3) would require 5 hours of instrument training for the gyroplane rating, and a 2-hour cross-country flight. But the commenter states that there are no gyroplanes equipped for IFR flight, and there are no gyroplane instrument ratings or instrument instructors. The commenter states that the only two certified gyroplanes used for training, the McCullock J2 and Air & Space 18A, are not capable of a 2-hour flight with reserves. The individual commenter also takes issue with the proposed requirement under § 61.129(d)(3) for 20 hours of training in the areas of operation under § 61.127(e), stating there is no reason to increase the required training hours, especially given that private pilot requirements would be reduced.

SSA opposes proposed § 61.129(f) and suggests different requirements for a commercial certificate with a glider rating.

Several individual commenters opposed proposed § 61.129(a) requirements because they believed that the option of obtaining a commercial pilot certificate without an instrument rating was being eliminated.

FAA Response: The FAA has retained the requirements for class-specific training, however the final rule is revised to permit certain requirements such as the solo flight requirements for the multiengine airplane rating, to be met in any class of aircraft within an aircraft category. In response to HAI's comment regarding the performance of emergency maneuvers without an instructor on board the aircraft, the FAA notes that other training maneuvers such as stalls and slow flight, that are routinely performed in solo flight by pilot applicants may, when improperly performed, result in situations that adversely affect the safety of a flight. The FAA contends that these maneuvers when properly performed pose no adverse risk to the safety of the flight. Flight instructors should ensure that emergency maneuvers, like other maneuvers, only be performed in solo flight after an instructor determines that such maneuvers may be safely performed by the applicant, and under any restrictions that may be established by the instructor to ensure the safety of the flight.

The FAA acknowledges AOPA's argument that solo time in multiengine airplanes may be impractical due to liability and insurance concerns, and is therefore replacing the term ''supervised pilot in command flying'' with ''flight time performing the duties of pilot in command with an authorized instructor'' for multiengine airplanes. The FAA has therefore deleted any requirement for solo flight time in a multiengine aircraft.

In response to the concerns of HAI and others regarding the hazards of increased night training, the FAA reiterates its view that safety will be enhanced because it increased night training requirements, which will reduce the likelihood of pilots later being placed in circumstances where they may be required to engage in flight at night without appropriate experience.

The FAA concurs with the comments of HAI and others that instrument training may be impractical in helicopters and gyroplanes and has accordingly removed category and class-specific references to the instrument training requirements in § 61.129 for helicopters and gyroplanes. Similarly, in response to AOPA and other commenters, the FAA has modified the instrument requirements for airships.

Upon reviewing SSA's comments, and as a result of the FAA's decision not to adopt the proposed separation of the glider category into powered and

nonpowered classes in the final rule, as discussed in section IV,F, the requirements for gliders are clarified and consolidated under one paragraph.

The FAA has also included provisions set forth in Amendment No. 61–100, which permit credit to be given for the use of an approved flight simulator or approved flight training device. The FAA notes that Amendment No. 61–100 inadvertently omitted the requirement for an applicant for a commercial pilot certificate with an airplane rating to log at least 100 hours of flight time in powered aircraft, at least 50 hours of which must be in airplanes. This requirement has been reinstated in this final rule.

In addition, the FAA has added language to the existing solo cross-country requirements to ensure pilots meet minimum standards specified under Annex 1 to the Convention on International Civil Aviation. The additional language requires that an applicant for a commercial pilot certificate complete a solo cross-country flight of a total of not less than 300 nautical miles. The existing rule states that a cross-country flight must have landings at a minimum of three points, one of which is at least a straight line distance of 250 nautical miles from the original point of departure. All commercial pilot applicants with a private pilot certificate currently meet the total 300-nautical-mile requirement; however, private pilots certificated after the effective date of this rule will not, due to the decrease in the solo cross-country flight requirements for private pilots set forth in this rule. The FAA wants to ensure that the requirements under Annex 1 to the Convention on International Civil Aviation are specifically met, to facilitate the acceptance of U.S. pilot certificates internationally.

Additionally, because the FAA has withdrawn the proposal to establish a separate airship instrument rating, the FAA is reinstating the instrument aeronautical experience requirements found in existing § 61.135(c) into paragraph (g)(3) of the final rule. An applicant seeking a commercial pilot certificate with an airship rating must have 40 hours of instrument time, of which at least 20 hours must be in flight, with 10 hours of that flight time in airships.

Section 61.131 Exceptions to the night-flying requirements for the commercial pilot certificate.

Proposed § 61.131 deleted the exception for applicants who are not seeking night flying privileges. However, an applicant with a medical restriction prohibiting the operation of an aircraft at night would not have been required to meet the night flight training requirements and be issued a certificate with a limitation prohibiting night flying. In addition, an applicant who accomplished flight training in Alaska would have had 12 months after the issuance of a temporary airman certificate to comply with the night flight training requirements.

The provisions of prior § 61.131 ''Rotorcraft ratings: Aeronautical experience'' were moved to § 61.129.

Comments: AOPA is concerned about the special provisions regarding Alaskan airmen who hold temporary certificates with the limitation ''night flying prohibited.'' AOPA opposes the wording of § 61.131(b)(2), which would suspend an airman's certificate if the pilot does not complete the night training requirements within 12 calendar months. AOPA states that the FAA certificates numerous pilots each year with permanent night flight restrictions, and there is no reason why Alaskan airmen should be singled out for suspension of their certificates simply because they fail to remove their night flight restrictions.

FAA Response: AOPA's objection is noted and addressed in the FAA's response to AOPA's comment in § 61.110. As in that section, the FAA has eliminated the reference to a 12-month temporary certificate from § 61.131 in the final rule, because current FAA temporary certificates are valid for 120 days. In addition, by deleting the exception for pilots who have night flying restrictions due to medical conditions, these pilots will now be required to have 3 hours of night flight training. However, the certificates of such pilots will be issued with an operating limitation prohibiting night flying. The FAA has determined that safety will be enhanced because this requirement will reduce the likelihood of pilots later being placed in circumstances where they may be required to engage in flight at night without appropriate night training.

Section 61.133 Commercial pilot privileges and limitations: General.

The FAA proposed to clarify the privileges for persons who hold a commercial pilot certificate with respect to the exercise of certificate privileges for compensation or hire issue. In Notice No. 95–11, the FAA proposed to add the limitation that was in existing § 61.129 to proposed § 61.133(b), which prohibits commercial pilots with an airplane category rating, but without an instrument airplane rating, from carrying passengers for hire in airplanes on cross-country flights of more than 50 nautical miles or at night. The same limitation was proposed for commercial pilots with a powered-lift category rating, without an instrument powered-lift rating; and a lighter-than-air category and airship class rating, without an instrument airship rating. The FAA also proposed to revise the language ''hot air balloon with airborne heaters'' in existing § 61.139, to ''gas balloons'' and ''balloons with airborne heaters.'' The proposal also revised the language for the operating limitations that restrict the pilot privileges to the type of balloon in which the person accomplishes the practical test.

The FAA also eliminated from § 61.133(c) the privilege in existing § 61.139 for commercial pilots with a lighter-than-air category and associated class rating to give training in an airship or free balloon, because of the proposed flight instructor certificate for the lighter-than-air category.

Comments: AOPA supports the clarification of the language in this paragraph.

FAA response: Paragraph (a) is adopted as proposed with a minor editorial change. As discussed in section IV,D, the FAA has withdrawn the proposal for an instrument airship rating and, consequently, the language relating to this rating was withdrawn from paragraph (b). As discussed in section IV,C, the FAA has decided to withdraw the proposed flight instructor certificate and allow, in paragraph (c), commercial pilots with a lighter-than-air category and associated class rating to give training in an airship or free balloon. Except for the changes previously discussed, as well as format and editorial changes, this section is being adopted as proposed.

Subpart G—Airline Transport Pilots

Section 61.151 Applicability

In Notice No. 95–11, the FAA proposed to establish a section in subpart G specifying the applicability of the subpart. No substantive comments were received on this section, and it is adopted as proposed.

Section 61.153 Eligibility requirements: General

In § 61.153, the FAA proposed that an applicant for any ATP certificate hold a commercial pilot certificate with an instrument rating that is appropriate to the category and class of aircraft for the rating sought. The FAA also proposed to delete the current provision that allows an applicant to be concurrently enrolled in an instrument rating course upon application for the certificate. The

minimum age requirement of 23 years to take the practical test, but not to take the knowledge test, was retained. The FAA also proposed to permit an applicant for an ATP certificate to hold only a third-class medical certificate, while the first-class medical certificate would continue to be required to exercise the privileges of the certificate. In addition, the proposal eliminated the existing requirement for an applicant to be able to ''speak [the English language] without accent or impediment of speech that would interfere with two-way radio conversation.'' However, applicants were required in the proposed rule to read, speak, write, and understand the English language to be eligible to apply for the ATP certificate. The proposal eliminated the requirement that an applicant be a ''high school graduate or its equivalent in the Administrator's opinion, based on the applicant's general experience and aeronautical experience, knowledge, and skill.'' In keeping with procedures for other knowledge tests, proposed § 61.153 permitted applicants to take the ATP knowledge test before obtaining the aeronautical experience necessary for the issuance of an ATP certificate. The proposed rule also included requirements found in existing § 61.155 for applicants who are military pilots, and applicants who hold a pilot license issued by a member State of ICAO.

Comments: ALPA and NATA oppose the deletion of the requirement for ATP certificate applicants to have at least a high school diploma. NATA states that the current requirement is necessary for full comprehension of aircraft information, and it can be used to encourage children who aspire to aviation careers to remain in school. ALPA comments that the complexity of modern air transport increases the need for a strong academic background. A few individual commenters also opposed deletion of this requirement.

AOPA supports elimination of the requirement that an applicant for an ATP knowledge test must have 1,500 hours of flight time and possess a valid first-class medical certificate. GAMA also supports the provision that permits an applicant to hold only a third-class medical certificate when that person applies for an ATP certificate, because it allows flexibility and encourages training without decreasing safety.

HAI opposes proposed § 61.153(e)(1) requiring an applicant for an ATP certificate to hold at least a commercial pilot certificate and an instrument rating. The commenter contends that it is a burden to require applicants, including foreign pilots entering an ATP program to upgrade their certificates, to go through the paperwork to obtain a commercial certificate with an instrument rating if at the end of ATP training the applicants will have exceeded those requirements. HAI proposes that the rule only require an applicant to ''meet'' these requirements instead of ''holding'' the commercial certificate and instrument rating.

Some individual commenters also objected to the elimination of the high school diploma requirement for an ATP applicant. Another commenter endorses the proposed changes under § 61.153.

FAA Response: In response to comments regarding the proposed English language requirements the provisions regarding English language proficiency have been standardized throughout part 61, as discussed in section IV,G. The stated requirement for an applicant for an ATP certificate to possess only a third-class medical certificate has also been placed in § 61.23 as have similar requirements for other pilot certificates. A first class medical certificate however is still required to exercise the privileges of the ATP certificate. The FAA also contends that all ATP applicants should possess the knowledge, skill, and experience required of a holder of a commercial pilot certificate with an instrument rating. This level of initial proficiency in an ATP applicant can only be ensured by requiring an applicant to meet the objective evaluation criteria for the issuance of the commercial pilot certificate with an instrument rating. Regarding ALPA's and NATA's comments on the elimination in this section of the requirement for a high school diploma, the FAA's experience is that ATP certificate applicants typically achieve a higher level of education, which makes the existing requirement obsolete.

Section 61.155 Aeronautical knowledge.

Proposed § 61.155 combined the existing aeronautical knowledge requirements of applicants for airplane and rotorcraft ratings, and updated the list of items of required aeronautical knowledge for ATP applicants. These requirements would also apply to the powered-lift rating. Proposed revisions included deleting references to air navigation facilities on Federal airways, such as rotating beacons, course lights, and radio ranges, and adding requirements such as physiological factors, aeronautical decision making and judgment, windshear, and resource management. The proposal also clarified that an applicant for a type rating would not be required to take an additional knowledge test, if the applicant already held an ATP certificate with the appropriate category rating.

Comments: GAMA supports the inclusion of windshear and microburst awareness, identification and avoidance, flight crewmember physiological factors, aeronautical decision making, and flight deck resource management in the aeronautical knowledge requirements for ATP applicants. GAMA believes that the statement ''including recognition and avoidance of wake turbulence'' was unintentionally omitted and should be included in § 61.155.

AOPA cannot support the proposed requirement for aeronautical decision making and judgment training until such time as the material and standards for this training are disclosed. AOPA believes that consideration should have been given to training in air traffic delays because ATPs are the pilots most likely to need this type of training.

Approximately 40 comments address the general issue of requiring training in human factors, with more than half in opposition. One individual commenter calls the proposal ''needless;'' another states that while such training is worthwhile, it is not a regulatory issue. ALPA, AsMA, and SSA support human factors training for all levels of pilot certification. ALPA recommends adding ''pilot fatigue,'' including both its causes and impact on operations, to the training curriculum. ALPA states that the FAA should provide pilots and instructors with specific guidance and references for study. SSA notes that crew resource management applies even to single-place aircraft by emphasizing the importance of an organized cockpit. According to SSA, the soaring community recognizes that hypoxia, hypothermia, and other conditions affect the pilot, and training on the use of oxygen is addressed in areas where flights above 10,000 feet may be conducted regularly. SSA states that additional regulation in this area is not required.

FAA Response: The FAA purposely deleted the recognition and avoidance of wake turbulence as an aeronautical knowledge area for the ATP certificate. This training was deleted because it is provided at lower certificate levels (student and private) and requiring it in § 61.155 would be duplicative of these requirements. The FAA, through this regulatory review, has made an effort to eliminate repetitive requirements, and conform with the ''step-by-step building block'' concept of pilot certification. Also, the FAA has replaced the term ''flight crewmember physiological factors'' with ''human factors'' because the latter term encompasses the former,

and is more commonly recognized and understood in the aviation community. As stated in the FAA's previous discussion of this issue, the FAA believes that training in human factors and aeronautical decision making may decrease the number of accidents attributable to pilot error, because the implementation of similar training in air carrier operations has decreased accident rates. This is further discussed in section IV,H. In response to ALPA's comment, the FAA provides pilots and instructors with guidance materials regarding human factors and aeronautical decision making in: AC 67–2, ''Medical Handbook for Pilots''; AC 61–107, ''Operations of Aircraft at Altitudes Above 25,000 feet MSL and/or MACH numbers (Mmo) Greater Than .75''; and in the Airline Transport Pilot, Aircraft Dispatcher, and Flight Navigator Knowledge Test Guide.

Section 61.157 Flight proficiency.

Proposed § 61.157 established the flight proficiency requirements for applicants for airplane and rotorcraft ratings, and included separate and revised areas of operation for the airplane single-engine rating, airplane multiengine rating, rotorcraft helicopter rating, and the proposed powered-lift rating. The proposed rule also included specific approved areas of operation for each rating. In addition, the proposed rule clarified that the type ratings on a superseded pilot certificate would be elevated to the ATP certificate level, for the category and class of aircraft in which a pilot satisfactorily accomplished the ATP practical test.

No substantive comments to this section were received. This section has been adopted as proposed and modified to include the provisions of §§ 61.153 and 61.158, which pertain to the use of approved flight simulators or approved flight training devices to obtain an airplane or helicopter rating. The changes were set forth in Amendment No. 61–100. The proposal has also been modified to include the provisions for the use of approved flight simulators or approved flight training devices to obtain a rating in a powered-lift. This section also has been revised to include appropriate limitations for appropriate tests not taken under instrument flight rules.

The FAA notes that Amendment No. 61–100 permits a proficiency check conducted under § 121.441 or checks conducted under §§ 135.293 and 135.297 to satisfy the requirements of § 61.157. This final rule specifies that these checks must include all maneuvers and procedures required for the issuance of a type rating, and that any check must be evaluated by a designated examiner or FAA inspector.

Section 61.159 Aeronautical experience: Airplane category rating.

The FAA proposed that § 61.159 include the prior aeronautical experience requirements for an airplane category rating with no substantive changes.

Comments: AOPA states that although this section was not changed in Notice No. 95–11, proposed § 61.159(a)(3), which is based on an existing § 61.155(a)(3), is the source of considerable misinterpretation by airmen and FAA personnel, and should be clarified. The problem lies in the use of the phrase ''in actual flight,'' which has been interpreted incorrectly to mean that the hours must be flown in actual IMC. AOPA requests that the rule be changed to reflect the ''correct and documented interpretation'' that an applicant for an ATP must have 75 hours of instrument time in actual or simulated IMC, 25 hours of which may have been obtained in a simulator or flight training device. AOPA also objects to proposed § 61.159(c) because there is no provision for crediting second in command time such as safety pilot time. AOPA states that the FAA sought to rectify this situation in Amendment 61–71, which ''clearly states that all second in command time that meets the requirements of the current § 61.153(c) may be credited toward the ATP aeronautical experience requirements.''

FAA Response: The FAA agrees with AOPA's arguments regarding the confusion produced by the phrase ''in actual flight'' and has deleted the word ''actual.'' An incorrect reference to part 119 certificate holders was also eliminated. The FAA also agrees with AOPA's comment regarding safety pilots logging second in command time, and has added § 61.159(c)(1)(iii), which permits a safety pilot to credit second in command time toward the total flight time requirements for an ATP certificate. In addition, the provisions of proposed § 61.167(b) and (c) were placed in § 61.159(d) and (e) in the final rule. Provisions for the use of approved flight simulators and approved flight training devices were also included as set forth in the final rule, Amendment No. 61–100.

Section 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

Proposed § 61.161 sets forth the aeronautical experience requirements for an applicant seeking an ATP certificate with a rotorcraft helicopter rating. It includes the aeronautical experience requirements for a rotorcraft category rating. No substantive comments were received. The section is being adopted as proposed, and was modified only to include provisions for the use of approved flight simulators and approved flight training devices.

Section 61.163 Aeronautical experience: Powered-lift category rating.

Proposed § 61.163 sets forth the aeronautical experience requirements for an ATP certificate with a powered-lift category rating. Existing § 61.161, ''Rotorcraft rating: Aeronautical skill,'' was eliminated, and its existing provisions were covered in proposed § 61.153.

Comments: AOPA and NAFI object to the proposed section because of their objection to the FAA's decision to establish a powered-lift category rating.

FAA Response: The FAA responded to objections against the establishment of the proposed powered-lift category rating in section IV,F. In the final rule, the FAA removed the reference to ''actual'' flight and changed the section to include provisions for the use of approved flight simulators and approved flight training devices.

Section 61.165 Additional aircraft category and class ratings.

Proposed § 61.165 contained the provisions of existing § 61.165, ''Additional category ratings,'' and included provisions for a powered-lift category rating.

Comments: AOPA and NAFI object to the proposed section because of their objection to the FAA's decision to establish a powered-lift category rating.

FAA Response: The FAA responded to objections against the establishment of the proposed powered-lift category rating in section IV,F. The FAA adopted this section as proposed, with minor editorial changes.

Section 61.167 Privileges.

Proposed § 61.167 contained the provisions of existing § 61.171. Proposed § 61.167(b) also contained the limitations found in existing § 61.155(d). Those limitations applied to applicants who credit second in command or flight engineer time in meeting the total time requirement for an ATP certificate. No substantive comments were received to this section, therefore, the FAA is implementing the proposed changes. However, the provisions of § 61.167(b) and (c) in the proposed rule were moved to § 61.159(d) and (e) in the final rule, and the title of the section was changed from ''General privileges and limitations'' to ''Privileges'' because there are no

limitations in this paragraph. After further review, the FAA has decided to restate the privileges in existing § 61.169 in order to clarify that an ATP can continue to provide instruction in air transportation service and to include provisions for providing instruction in approved flight simulators and approved flight training devices. Other clarifying and terminology changes were also made to this section.

Subpart H—Flight Instructors

Section 61.181 Applicability.

No substantive changes were proposed for this section, and it is adopted as proposed.

Section 61.183 Eligibility requirements.

In proposed § 61.183, the FAA revised the existing eligibility requirements for flight instructors. In paragraph (b), the FAA proposed that an applicant be able to speak and understand the English language. The existing rule requires an applicant to converse fluently.

In proposed paragraph (c), the FAA added requirements for an applicant for a flight instructor certificate with a helicopter, airship, or powered-lift rating to hold an instrument rating. This was in addition to the existing requirement, which only specified that an applicant for a flight instructor certificate with an airplane or instrument rating hold an instrument rating on his or her pilot certificate.

Proposed paragraphs (d) through (g) revised existing requirements, specifying that an applicant would be required to receive from the ground instructor or flight instructor who gave the applicant training or reviewed the applicant's home-study course, an endorsement that states the applicant is prepared for the knowledge test, and receive from the flight instructor who gave the applicant training, an endorsement that states the applicant is prepared for the practical test.

Proposed paragraph (j) required applicants to have logged at least 15 hours of pilot-in-command time in the category and class of aircraft that is appropriate to the flight instructor rating sought. The existing requirement only applies to flight instructors seeking an additional rating.

Comments: AOPA and NAFI object to proposed § 61.183(c)(2)(iii) and (c)(2)(iv) requirements for flight instructors with helicopter ratings or airship ratings to have an instrument rating, because there is no safety problem under the current system, and because most operations in these aircraft are conducted under VFR. HAI expresses the same opposition with respect to helicopters, and adds that the shortage of helicopters equipped for instrument training would make the requirement burdensome. If the proposal were implemented, HAI recommends a 2-year transition period during which a CFI could continue to teach.

With respect to proposed paragraph (j), SSA supports the requirement that a pilot must log at least 15 hours of pilot-in-command time in the category and class of aircraft prior to receiving an initial flight instructor certificate, but feels it is an excessive requirement in the case of additional ratings. The commenter states that while the economic impact of the 15-hour requirement for an initial instructor rating is minimal, the impact would be significant for additional ratings. SSA proposes a minimum of 20 hours pilot in command flight time and 5 hours in category for an instructor seeking to add a glider rating to a flight instructor certificate.

FAA Response: The FAA concurs with the views of AOPA, HAI, and NAFI that requiring an applicant for a flight instructor certificate with a helicopter possess an instrument rating is unnecessary and burdensome. The FAA is therefore deleting this proposed requirement from the final rule. As the FAA has decided not to establish a flight instructor rating for airships, the proposed requirement that an applicant for a flight instructor rating for an airship possess an instrument rating has also been withdrawn. However, the FAA has decided that the proposal remains valid for powered-lift and instrument ratings. In response to SSA's comment regarding 15 hours of pilot in command experience in category and class for an additional flight instructor rating, the FAA notes that this is an existing requirement as found in § 61.191(b). Additionally, the FAA revised the rule to permit an applicant to forego taking the knowledge test specified in § 61.185(a) if certain equivalent conditions are met by the applicant. The FAA did not propose to change this requirement. Except for these changes and other editorial changes to include the use of approved flight simulators and approved flight training devices, the final rule is adopted as proposed.

Section 61.185 Aeronautical knowledge.

In Notice No. 95–11, the FAA proposed to add the requirement for flight instructor applicants to receive and log ground training on the aeronautical knowledge areas in which ground training is required for a recreational pilot certificate. This was an addition to the existing requirement for a flight instructor applicant to log instruction on the aeronautical knowledge areas relating to the private and commercial pilot certificates.

Proposed paragraph (b)(2) required a flight instructor applicant to receive and log ground training on the aeronautical knowledge areas in which ground training is required for an instrument rating, if that person is applying for a flight instructor certificate in the following categories and classes of aircraft: airplane single-engine, airplane multiengine, airship, powered-lift, or any instrument flight instructor rating.

Comments: NAFI approves of proposed § 61.185(a) requiring a logbook entry for aeronautical knowledge training, but the association feels strongly that this requirement should be waived for certificated teachers. No other substantive comments were received.

FAA Response: The FAA agrees with NAFI's comment and has incorporated language in this section that excepts certain individuals, including certificated teachers, from meeting the requirements of paragraph (a) of this section. Additionally, minor editorial changes have been made to the final rule.

Section 61.187 Flight proficiency.

The FAA proposed to move to § 61.195 the existing requirement within this section addressing the minimum experience requirements for a flight instructor who can train first-time flight instructor candidates.

In Notice No. 95–11, the FAA proposed paragraphs to list those specific areas of operation in which an applicant must receive and log flight instruction or ground instruction prior to taking any practical test for a flight instructor rating. The specific areas of operation are listed for flight instructors with ratings in the following categories and classes of aircraft: airplane single-engine, airplane multiengine, rotorcraft helicopter, rotorcraft gyroplane, powered glider, nonpowered glider, airship, balloon, and powered-lift.

Comments: Substantive comments objected only to the creation of proposed new categories, classes, and/or ratings.

FAA Response: As discussed in section IV,H, the FAA replaced existing flight proficiency requirements for certificates and ratings with general areas of operation. As discussed in section IV,F, the FAA has decided not to adopt the proposal for separate powered and nonpowered glider class ratings, and therefore the final rule

consolidates proposed glider areas of operation within one category. As discussed in section IV,C, the final rule does not adopt the proposal for flight instructor certificates in the lighter-than-air category, therefore, the associated areas of operation have been deleted. Except for these changes, and other editorial changes to include the use of approved flight simulators and approved flight training devices, the final rule is adopted as proposed.

Section 61.189 Flight instructor records.

In Notice No. 95–11, the FAA proposed that a flight instructor must use and retain a syllabus to train all students.

Comments: AOPA opposes the requirement in proposed § 61.189(a) that an instructor must sign the logbook of each person to whom ground training is given. According to AOPA, the proposal would require an instructor giving a presentation to an audience of hundreds to give an endorsement to all attendees. AOPA further opposes the requirement in § 61.189(b)(2) that a flight instructor must maintain a record of the results of each practical test or knowledge test for which an endorsement was provided. It is AOPA's position that it is not an instructor's responsibility to keep track of a student's test results, especially for instructors in weekend ground schools and seminars. The commenter opposes the proposed requirement in § 61.189(b)(3) that a copy of each syllabus used for training be retained, and AOPA asks if this refers to the course syllabus or to each syllabus used for individual students. In addition, AOPA objects to the proposed § 61.189(b)(4) requirement that all records listed in § 61.189 be retained for 3 years. NAFI and NATA similarly object to the requirement for an instructor to keep copies of the syllabus, stating that this would be a burden on instructors and a potential source of litigation. NATA states that student responsibility could best be ensured by requiring the student to present a copy of the syllabus to the designated examiner during a practical test. Individual commenters echoed these associations' views.

FAA Response: The FAA acknowledges the concerns of AOPA regarding logbook entry requirements and the retention of test results, but points out that these are existing requirements. The FAA has withdrawn the proposal for flight instructors to follow a written syllabus; therefore, the recordkeeping requirements of this section pertaining to syllabuses have been eliminated. Apart from these and minor editorial changes, the final rule has been adopted as proposed.

Section 61.191 Additional flight instructor ratings.

No substantive changes to this section were proposed. The requirement in existing § 61.191(a) that a flight instructor applicant for an additional rating must hold a pilot certificate with ratings appropriate to the flight instructor rating sought was placed in proposed § 61.183, which pertains to eligibility requirements. The requirement in existing § 61.191(b) that a flight instructor applicant for an additional rating must have at least 15 hours of pilot-in-command time in the category and class of aircraft that is appropriate to the flight instructor certificate sought was also placed in proposed § 61.183.

Comments: As discussed in reference to proposed § 61.183, SSA opposes applying the requirement for 15 hours of pilot in command in appropriate category and class for additional flight instructor ratings. HAI objects to proposed § 61.191 because it no longer requires a flight instructor to take a knowledge test for additional flight instructor ratings. The commenter recommends retention of the existing rule, ''with a shortened knowledge test for additional category ratings.''

FAA Response: SSA's concerns are addressed in the FAA comments to proposed § 61.183. With respect to HAI's concern, the FAA points out that the knowledge test requirements are incorporated into § 61.183, and that § 61.183(f) requires a flight instructor applicant to pass a knowledge test on the aeronautical knowledge areas listed in § 61.185 (b) and (c) that are appropriate to the rating on the flight instructor certificate sought. The final rule is adopted as proposed.

Section 61.193 Flight instructor privileges.

In Notice No. 95–11, the FAA proposed revising the title of this section from ''Flight instructor authorizations'' to ''Flight instructor endorsements and authorizations.''

The proposal deleted the existing detailed listing of types of instructor endorsements. The listing was replaced by more general language, although a detailed list of the certificates and ratings for which these endorsements apply was provided.

Although no substantive comments were received, the final rule was revised from the proposed rule to eliminate redundant language. Also, the title of this section was revised to read ''Flight instructor privileges'' to more accurately reflect the requirements contained in this section.

Section 61.195 Flight instructor limitations and qualifications.

The FAA proposed revising the title of this section from ''Flight instructor limitations'' to ''Flight instructor limitations and qualifications.''

The FAA proposed to revise, in proposed paragraph (a), the prior limitation that a flight instructor may not conduct more than 8 hours of flight training in a 24-hour period. The FAA also proposed to limit a flight instructor to a total of no more than 8 hours of flight training and commercial flying in a 24-hour period.

Proposed paragraph (b)(2) clarified the current requirement that to give training in an aircraft that requires a type rating, the flight instructor must hold a type rating in that aircraft. The existing rule implied that the flight instructor is required to hold a type rating on the instructor's pilot and flight instructor certificates. The proposal specified that a flight instructor is required to hold a type rating on his or her pilot certificate and not the instructor certificate.

Proposed paragraph (c) clarified that a flight instructor who gives instrument flight training for the issuance of an instrument rating or a type rating that is not limited to VFR is required to hold the instrument rating for the category and class of aircraft for which the instrument training is being given, on the instructor's pilot certificate and flight instructor certificate.

Proposed paragraph (d) revised the existing flight instructor endorsements. The requirement for a flight instructor to endorse a student pilot's certificate and logbook for supervised pilot in command cross-country flight was clarified in paragraph (d)(1). Under this proposal, the flight instructor was required to determine that the flight could be performed within any limitations in the student's logbook that the instructor considered necessary for the safety of flight. The intent of the proposal was to ensure that the flight instructor providing the endorsement is aware of any special limitations pertaining to an individual student.

Proposed paragraphs (d)(5) and (d)(6) clarified that the flight instructor who endorses a pilot's logbook for a flight review or an instrument proficiency test must have conducted that flight review or instrument proficiency test in accordance with all applicable requirements.

Proposed paragraph (f) expanded the existing rule that requires a flight instructor to have at least 5 flight hours

of operating experience as a pilot in command in the specific make and model of multiengine airplane or helicopter, to include powered-lifts. The complexity and flight characteristics of these aircraft require that a flight instructor be proficient in the aircraft and requires that the flight instructor requirements for powered-lifts parallel those requirements for multiengine airplanes and helicopters.

The FAA proposed in paragraph (g)(1) to require a flight instructor to give all training from a control seat that meets the requirements of § 91.109. Proposed paragraph (g)(2) clarified that the aircraft in which training is given should have at least two pilot seats and be of the same category and class for which the rating is sought. The proposal required a flight instructor who trains a person who desires to fly a single-place aircraft to perform the pre-solo training in an aircraft that has two pilot seats, is of the same category and class as the single-place aircraft, and has similar flight characteristics to that of the single-place aircraft.

Proposed paragraph (h) revised the minimum experience requirements for a flight instructor who can train first-time flight instructor candidates. In the existing rule, such requirements are contained in § 61.187. The FAA added minimum ground training experience requirements for an instructor training a first-time instructor applicant, and clarified the requirement that a person not serving as an instructor in an FAA-approved course and providing flight training to a flight instructor candidate, have a minimum of 24 months of experience as a flight instructor. The FAA also proposed that, in FAA-approved courses, flight instructors who give training to applicants for an initial flight instructor certificate may, in lieu of meeting the previously discussed requirements, have a record of having endorsed at least five applicants for a pilot certificate, with at least 80 percent having passed the practical test on the first attempt; and must have given at least 400 hours of instruction in airplanes, rotorcraft, or powered-lifts; 100 hours in gliders; or 40 hours in lighter-than-air category aircraft.

In paragraph (i) of the proposal, the FAA clarified that a flight instructor may not make any self-endorsement for the furtherance of a certificate, rating, proficiency test, flight review, authorization, operating privilege, practical test, or knowledge test.

Comments: AOPA opposes proposed § 61.195(a) restricting the number of hours a flight instructor may fly in a 24-hour period to 8 hours of flight training or any combination of commercial flying and flight training. The commenter does not believe that the FAA has demonstrated a need for such a restriction. According to AOPA, flight instructors are the lowest paid aviation professionals in the industry, and they usually cannot afford to instruct on a full-time basis. AOPA fears that the restriction will force more instructors to leave the profession. HAI also objects to this proposal and recommends that a flight instructor have the same duty-time requirements as other commercial pilots. Commenting on § 61.195(c), HAI asks for clarification as to whether a CFI can give the instrument training for a private certificate or commercial certificate.

With apparent reference to proposed paragraph (f), SPA recommends additional requirements for seaplane instructors. The commenter recommends not only a minimum of 5 hours of pilot in command in category and class but, to ensure that an instructor has appropriate floatplane or flying boat experience, a minimum of 5 hours of training in the type of aircraft in which instruction will take place. SPA also states that the present system fails to limit the authority of a pilot trained in either floatplanes or flying boats ''to act immediately as pilot in command in the other class without any further training.'' An individual commenter suggests a requirement under § 61.195(f) for a flight instructor to have 5 hours experience as pilot in command in the make and model of seaplane and/or gyroplane to give instruction in that aircraft.

One individual commenter opposes the proposed paragraph (g)(1) requirement that an aircraft have dual flight controls for instruction, because this may discourage pilots who own Beechcraft Bonanzas and Barons with throwover control wheels from receiving instruction in their own aircraft. Another commenter opposes the requirement that all flight training must be given from a control seat. The commenter cites instances where this would not be necessary, such as instrument instruction with a qualified safety pilot in the right seat and the instructor in a jump seat, pilot upgrade training with a qualified pilot serving as the other crewmember, and instrument instructor training while giving an instrument student concurrent instruction.

AOPA expresses a concern regarding the requirement in proposed § 61.195(g)(2)(ii) that if supervised pilot in command flight is to be conducted in a single-place aircraft, then all pre-supervised pilot in command training must be conducted in an aircraft with two pilot seats, of the same category and class, and that has ''similar flight characteristics of the single-place aircraft.'' AOPA contends that this language is very subjective and could be a source of litigation. The association recommends deleting this requirement. On a similar issue, an individual commenter states that § 61.195(g)(2)(ii) should provide for cases in which an owner of a single-place powered glider may receive supervised pilot in command flight training in that aircraft.

AOPA and NAFI oppose the existing and proposed requirement in § 61.195(h) that a pilot be an instructor for at least 24 months before teaching an instructor applicant. These commenters state that a minimum amount of instructional experience requirement may be appropriate, but the FAA has failed to prove the need for the specified 200 hours or 24 months of experience required of a flight instructor training a first-time flight instructor applicant in an airplane, rotorcraft, or powered-lift. SSA supports the proposal's elimination of the prior phrase ''immediately preceding'' from the provisions of existing § 61.87(b), because instructors with years of experience, but who have been relatively inactive over the preceding 2 years, would still be eligible to pass that experience to a new instructor candidate. SSA states that these instructors may even be more qualified than an instructor who has only 2 years experience.

AOPA and GAMA suggested that the FAA accomplish its objectives regarding single-engine and multiengine proficiency for instrument flight instructors by means of a limitation in this proposed section, as an alternative to the proposed separation of the instrument instructor rating into single-engine and multiengine classes.

FAA Response: The objections of AOPA and HAI to the proposed flight instructor duty time limitations were reviewed. The FAA agrees, and has decided to delete the proposed wording ''or any combination of commercial flying and flight training'' in the final rule. The FAA acknowledges the objections of AOPA and NAFI to the existing and proposed 200-hour, 24-month experience requirements for instructors who train first time instructor applicants. The FAA did not propose changes to the provisions to the existing rule; therefore, AOPA and NAFI's recommendations are beyond the scope of this rulemaking.

Regarding SPA's comment to require 5 hours of experience as pilot in command in a seaplane or gyroplane for instructors providing flight training in these aircraft, the FAA did not propose

this change in Notice No. 95–11; therefore, the recommended change is beyond the scope of this rulemaking. With respect to objections to the proposed dual control requirements, the FAA points out that throwover yokes are permitted for instrument instruction. The requirement for instruction in an aircraft with dual flight controls is an existing requirement in § 91.109, and this rule merely incorporates that requirement into the provisions of this section. The FAA agrees with the commenter regarding the proposed rule's provisions that require all training to be given from a control seat. Therefore, the FAA has eliminated provisions from the rule that required a flight instructor to occupy a control seat when providing flight training. The FAA has concluded that operational requirements and accident/incident data do not establish a sufficient safety justification for this increased regulatory and economic burden. Regarding AOPA's comment on the proposal to require the use of aircraft with similar flight characteristics when providing presolo training to a pilot seeking solo flight privileges in a single-place aircraft, the FAA has determined that the proposed language is vague and has removed it in the final rule. In addition, the FAA replaced the phrase ''pilot seats'' with ''pilot stations''. The FAA made this change to accommodate balloon category aircraft, which do not have seats, and therefore make applicable all categories and classes of aircraft. In response to AOPA and GAMA, with respect to separate single-engine and multiengine flight instructor instrument ratings, the FAA has withdrawn the proposal as further discussed in section IV,D. References to all flight instructor certificates that were proposed, but not adopted, have also been deleted. Additionally, paragraph (j) was added in accordance with provisions set forth in Amendment No. 61–100. Except for these changes, and various formatting and editing changes, the final rule is adopted as proposed.

Section 61.197 Renewal of flight instructor certificates.

In Notice No. 95–11, the FAA proposed to revise the existing requirements of § 61.197 for the renewal of flight instructor certificates. The proposal clarified that a record of training students used as a method of renewal should indicate that the instructor trained at least five students, with at least 80 percent having passed a practical test on the first attempt. The FAA also proposed to permit a flight instructor to renew the certificate presenting a satisfactory record as a check pilot, chief flight instructor, check airman, or flight instructor in an operation conducted under part 121 or part 135, or a comparable position involving the regular evaluation of pilots. The existing rule does not include a provision permitting an instructor to renew the certificate by presenting a satisfactory record ''in a comparable position involving the regular evaluation of pilots,'' but rather in ''other activity involving the regular evaluation of pilots.'' The FAA also proposed that satisfactory completion of renewal requirements within 90 days of the certificate expiration date would be deemed to have been accomplished in the month of expiration.

Comments: Approximately 100 comments address the proposed modifications to the flight instructor renewal requirements. Approximately 75 percent of the commenters oppose the changes, though in some cases opposition might be based on a misunderstanding of the proposal. A number of commenters state they believe flight instructors might lose their certificates if they are insufficiently active or fail to endorse the requisite number of students for a practical test. Some comments reflect the perception that flight instructor refresher courses could be used for only two consecutive renewals. Several commenters state that experienced flight instructors may not endorse many students for practical tests, but nevertheless remain active giving flight reviews, training in tailwheel or high-altitude airplanes, and instrument competency checks. Another commenter states that flight instructor refresher courses are not sufficient for instructors to maintain competency, and the instructors should demonstrate knowledge and competency to an FAA inspector or examiner for certificate renewal.

AOPA and NAFI object to the removal of the provision that allows flight instructors to renew their certificates by demonstrating competence to the local FAA office. NAFI states that this option is generally used by CFIs in an approved instructor course without a problem. AOPA comments that it is unaware of any safety problems or administrative burdens associated with this option, which is used by full-time instructors at part 141 schools. An individual commenter notes that proposed § 61.197(b)(2) eliminates the regulation's current inclusion of pilots in command of aircraft operated under part 121, stating that all but ''check airmen'' would be deleted by the proposal's listing of air carrier-related activity that would qualify holders of flight instructor certificates for renewal without accomplishing a practical test. Another commenter advocates including activity as a flight instructor at a pilot school approved under part 141.

AOPA expresses support for proposed § 61.197(c), which states that if an instructor takes any of the steps outlined in § 61.197 within 90 days of a certificate's expiration date, then the renewal requirements are considered accomplished within the month due rather than in the month of renewal. The commenter states that the current regulation penalized an instructor for renewing a certificate early.

FAA Response: The FAA points out that completion of a flight instructor refresher clinic will continue to remain a valid renewal option under this final rule, and that its completion may be used for any number of successive renewals. In response to AOPA and NAFI's objection to the removal of provisions that allow flight instructors to renew by demonstrating competence to the local FSDO, the FAA notes that it did not remove these provisions, and that they have been included in § 61.197(a)(2). This paragraph lists what must be contained in an individual's record of instruction and establishes specific criteria upon which certificate renewal will be based. In response to the elimination of the term ''pilot in command'' from the proposed rule, the FAA notes that deletion of the term ''comparable position'' from proposed paragraph (b)(2) would continue to permit a pilot other than a ''check airman'' who is involved in the regular evaluation of pilots to renew a flight instructor certificate under that paragraph's provisions.

In paragraphs (a)(2)(iii) and (b) of the final rule, the FAA has replaced the words ''expiration date'' with ''expiration month''. The proposed change, for example, would permit a certificated flight instructor whose certificate expired on April 30, 1997, to renew that certificate if the person accomplished any one of the renewal options specified in § 61.197 as early as January 2, 1997. The renewal date for the new certificate would be April 30, 1999. This change reflects existing FAA policy. Additionally, paragraph (c) was added to permit the practical test for a flight instructor certificate or additional rating to be conducted in an approved flight simulator or approved flight training device. Except for these changes, the final rule is adopted as proposed.

Section 61.199 Expired flight instructor certificates and ratings.

No substantive changes were proposed in this section. No substantive comments were received, and except for minor editorial changes, the final rule is adopted as proposed.

Section 61.201 [Reserved.]

The FAA proposed that this section be titled ''Conversion to the current flight instructor ratings.'' The FAA proposed that existing § 61.201 include provisions for current certificate holders to obtain new flight instructor certificates and ratings that were proposed in Notice No. 95–11. The proposed certificates are discussed in sections IV,C; IV,D; and IV,F.

Comments: NAFI objects to the creation of the new flight instructor ratings and the proposed conversion requirements for current instructors to obtain those ratings. According to NAFI, many instructors will be unable to meet the conversion requirements, and for some of the ratings, few if any will qualify, effectively revoking the majority of existing FAA flight instructor certificates. The commenter states that the FAA has failed to show a safety problem with the existing system of instruction. NAFI asks that all current instructors be ''grandfathered'' into the equivalent new certificates without any additional requirements.

AOPA also opposes not only the new flight instructor ratings, but the proposed conversion scheme method for current flight instructor certificates. AOPA comments that the proposed method is not a conversion at all but rather a complete set of new requirements that cannot be met except by a small number of instructors. The commenter contends that a large percentage of the country's instructor certificates are being effectively revoked by the proposal, imposing significant economic and administrative burdens on flight instructors. AOPA believes that the FAA has not demonstrated a safety problem with the existing system and insists that all current flight instructors (including commercial balloon pilots) should be granted any equivalent new certificate without any additional experience, training, or testing requirements. NAFI echoes the views of AOPA.

With respect to the proposed multiengine rating for instrument flight instructors, NATA states that although it is opposed to the proposal, all CFIIs who are also MEIs should be given the new certificate.

An individual commenter states that the conversion of certificates provisions proposed in § 61.201 should require an ''unexpired'' flight instructor certificate as a prerequisite for conversion.

FAA Response: Upon review of the comments, as discussed in sections IV,C; IV,D; and IV,F, the FAA has decided not to adopt any new flight instructor ratings. Therefore, no conversion provisions are needed. The proposed section is therefore deleted in the final rule.

The FAA notes that Amendment No. 61–100 reinstated the requirement for ''24 hours of ground and flight training for a flight instructor refresher clinic.'' Paragraph (a)(2)(iii) of this final rule does not contain that requirement.

Subpart I—Ground Instructors

In Notice No. 95–11, the FAA proposed to include revised ground instructor certificates and ratings in part 61. The FAA also proposed establishing ground instructor certificates that were category specific (airplane, rotorcraft, glider, lighter-than-air, and instrument). The proposal contained eligibility requirements for ground instructor certificate applicants, including a requirement that all applicants read, write, speak, and understand the English language.

Comments: Most commenters oppose the category-specific ground instructor ratings. Many commenters also oppose the English language requirement because of its affect on deaf instructors.

FAA response: The FAA is adopting the proposal to move the ground instructor requirements to part 61. However, the FAA is not adopting the category-specific ground instructor certificates as discussed in the analysis of § 61.5(d). Therefore, this subpart has been rewritten to restore the existing basic, advanced, and instrument ground instructor ratings. The proposed sections on aeronautical knowledge, ground instructor proficiency, ground instructor records, additional ground instructor ratings, ground instructor endorsements and authorizations, recency of experience for the holder of a ground instructor certificate, and conversion to current system of ground instructor ratings are not adopted in the final rule. Therefore, a section-by-section analysis of those proposals is not included.

In response to commenters' concerns regarding the English language requirements, the FAA has added language to § 61.213(a)(2) providing that if an applicant is unable to meet one of the English language proficiency requirements for medical reasons, the Administrator may place operating limitations on the applicant's pilot certificate that are necessary for the safe operation of the aircraft. This change is discussed in greater detail in section IV,G.

This subpart reflects existing requirements with editorial and format changes to clarify the privileges and limitations of the ground instructor ratings, and to permit a seamless integration of part 143 into part 61.

Part 141—Pilot Schools

Subpart A—General

Section 141.1 Applicability.

The proposed section contained only format revisions. No substantive comments were received on this section; it is adopted in the final rule with formatting changes.

Section 141.3 Certificate required.

In Notice No. 95–11, the FAA proposed minor format changes. No substantive comments were received on this section; it is adopted in the final rule as proposed.

Section 141.5 Requirements for a pilot school certificate.

In Notice No. 95–11, the FAA proposed to revise pilot school quality of training requirements.

The FAA proposed to replace the existing title ''Pilot school certificate'' with ''Requirements for a pilot school certificate.''

Proposed paragraph (a) specified that the application is to be completed in a manner prescribed by the Administrator.

In proposed paragraph (b), the FAA clarified that an applicant for a pilot school certificate must hold a provisional pilot school certificate for at least 24 calendar months prior to applying for a pilot school certificate.

The FAA proposed in paragraph (d) to modify existing pilot school quality of training requirements, which must be met within 24 calendar months prior to the application. The existing rule states that an applicant must train at least 10 students for a pilot certificate or rating, and that at least 8 of the school's 10 most recent graduates pass the practical test the first time. The FAA proposed to require that the applicant train and recommend 10 students, either for: (1) a knowledge or practical test for a pilot, flight instructor, or ground instructor certificate or rating, in which case at least 80 percent of the applicants must have passed the test on the first attempt on a test conducted by an FAA inspector, or an examiner who is not a school employee; or (2) an end-of-course test for a training course specified in appendix K to this part.

Comments: The operator of a balloon school suggests eliminating the requirement in proposed § 141.5(d)(1) that the examiner be independent of the school. The commenter states that the discussion of part 141 issues indicates that the intent was to require schools that train to a standard to have 80 percent of their students pass a knowledge test or practical test given by an FAA inspector or designated examiner not employed by the school. The commenter states that there is no indication that the intention was to require students of all schools to be examined by nonemployees of the school, but the language of proposed § 141.5(d)(1) would so require. The commenter states that this would create a hardship on balloon schools because of the relative scarcity of qualified, active balloon examiners. The commenter states that the nearest independent examiner to its school is a competitor, and the nearest FAA inspector who also is a qualified balloon examiner is 500 miles away. Another flight school commenter states similar objections to the same paragraph for flight schools in general. According to the commenter, the selection process for FAA-designated examiners, as well as the quality of training requirements specified are an adequate check against an examiner failing to be impartial. Flight schools and students could suffer time and cost burdens due to difficulties in scheduling check rides.

FAA Response: Because of the size of some part 141-approved schools, the FAA does not have sufficient personnel resources to respond to all the demands that would be generated by this proposal. In addition, the FAA considers designated examiners to be representatives of the Administrator, rather than employees of a school, when they are conducting practical tests. This does not preclude these examiners from otherwise being employed by a school. To prevent confusion, the FAA has deleted from paragraph (d)(i) the following language: ''a test that was conducted by an FAA inspector or an examiner who is not an employee of the school'', and replaced this language with ''the required test''. In addition, the FAA reformatted this section and added the phrase ''or any combination of those tests,'' to reflect the FAA's intent with respect to pass rates. Except for these changes, the final rule is adopted as proposed.

Section 141.7 Provisional pilot school certificate.

The FAA did not propose any substantive changes for this section, nor were any substantive comments received. The final rule is adopted as proposed.

Section 141.9 Examining authority.

No modifications were proposed for this section, nor were any substantive comments received. Except for a minor editorial change, the final rule is adopted as proposed.

Section 141.11 Pilot school ratings.

The FAA proposed to change this section by reorganizing the certificate courses in the existing rule and eliminating the test courses. No substantive comments were received. The final rule, however, adds the corresponding appendix references to the list of courses for clarification purposes. This section is adopted in the final rule, with these changes.

Section 141.13 Application for issuance, amendment, or renewal.

Proposed § 141.13 revised the requirement in the existing rule that requires a pilot school to submit three copies of a training course outline for the issuance or amendment of a pilot school certificate or rating. The FAA believes that two copies of the training course outline are sufficient. No substantive comments were received, and this section is adopted in the final rule as proposed.

Section 141.15 Location of facilities.

In Notice No. 95–11, the FAA proposed more permissive language for this section consistent with the proposed changes in § 61.2. No substantive comments were received on this proposal, and it is adopted as proposed.

Section 141.17 Duration of certificate and examining authority.

The FAA proposed to change the title of this section and to add paragraph (a)(5), which stated that a pilot school or provisional pilot school certificate expires whenever ''the Administrator has determined a school has not acted in good faith with a student to whom it has a contractual agreement to provide training.'' The proposal also included minor editorial and format changes.

Comments: GAMA, HAI, and NATA oppose the proposal to permit the FAA to revoke a school's authority if the Administrator determines that the school has not acted in good faith with a student. HAI states that the issue of ''good faith'' is not a regulatory issue. GAMA believes that the FAA should judge a part 141 school by the quality of its training, the performance of its students, and its adherence to the FAR. GAMA states that disputes between a school and a student should be left to the legal system. NBAA recommends deleting the language concerning ''good faith,'' because it would create new problems for the FAA involving ''contract arbitration between flying schools and disgruntled students.'' A balloon school also expresses opposition to the ''good faith'' language.

FAA Response: After review of the comments, the FAA has decided to withdraw proposed paragraph (a)(5) because of the concerns expressed by the commenters. In addition, the FAA deleted the language ''otherwise terminated'' from proposed paragraphs (a) and (c) because the use of the phrase is redundant.

The proposal is adopted with these changes.

Section 141.18 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

The FAA proposed only editorial changes to this section, and no substantive comments were received on the proposal. After further review, the FAA has decided to retain the language used in existing § 141.18 and not to adopt the language proposed in Notice No. 95–11.

Section 141.19 Display of certificate.

In Notice No. 95–11, the FAA proposed format revisions to this section. No substantive comments were received on this proposal, and it is adopted as proposed.

Section 141.21 Inspections.

The FAA proposed format changes to this section. No substantive comments were received on this proposal, and it is adopted with a minor editorial change.

Section 141.23 Advertising limitations.

The FAA proposed to revise this section to clarify that courses are approved under part 141. No substantive comments were received on this proposal. After review, the FAA has decided to delete the language ''otherwise terminated'' from paragraph (c)(2) because the use of the phrase is redundant. The proposal is adopted with this change.

Section 141.25 Business office and operations base.

The FAA proposed only minor format changes to this section. No substantive comments were received addressing this section, and it is adopted as proposed.

Section 141.26 Training agreements.

Although the FAA did not propose this section in Notice No. 95–11, the

section was adopted in Amendment No. 61–100. It is included in this final rule as previously adopted.

Section 141.27 Renewal of certificates and ratings.

In Notice No. 95–11, the FAA proposed revisions to the certificate renewal requirements of § 141.27.

Proposed paragraph (a)(1) eliminated the current requirement that the renewal of a certificate must be obtained no less than 30 days prior to the expiration of the pilot school certificate. The less restrictive wording ''may apply ...within 30 days'' was proposed.

Proposed paragraph (a)(2) specified that renewal of a pilot school certificate and rating is contingent on the Administrator determining that the school meets the requirements of this part with respect to its personnel, aircraft, facility and airport, approved training courses, and training records, as well as the recent training activity and training quality requirements of proposed § 141.5(d). The existing rule is more general, stating only that the Administrator has to determine that the school meets the requirements prescribed for this part. The requirement to meet § 141.5(d) effectively modified the school's quality of training requirements for renewal.

Proposed paragraph (a)(3) clarified that a school that does not meet the proposed renewal requirements may apply for a provisional pilot school certificate if the school meets the requirements of proposed § 141.7 of this part.

The FAA also proposed minor editorial and format changes to paragraph (b).

Comments: A flight school states that the limitations inherent in the proposed rule on the use of school-employed examiners are not justified, and could delay checkrides at great cost to the student. The commenter states that ''the school's POI should be allowed to continue the best course of action concerning the certification process.''

FAA Response: The FAA acknowledges the commenter's concern, and points out that the requirement in § 141.5 that tests be conducted by an FAA inspector or an examiner who is not an employee of the school has been withdrawn from the final rule. The proposed rule is adopted as proposed with minor editorial and format changes.

Subpart B—Personnel, Aircraft, and Facilities Requirements

Section 141.31 Applicability.

No substantive changes were proposed for this section, however, the existing rule was reformatted.

Comments: A balloon school operator states that the proposed § 141.31(b)(2) language ''must have: a written lease agreement of the...airport'' imposes a requirement to lease an airport. The commenter states that this language should be deleted, because it is not possible for it to lease an airport.

FAA Response: The FAA concurs with the commenter's concern and has edited the relevant language in the final rule.

Section 141.33 Personnel.

Proposed paragraph (c) clarified that the assistant chief instructor would be required to meet the requirements of proposed § 141.36.

Proposed paragraph (d) permitted a pilot school to designate check instructors to conduct student stage checks, end-of-course tests, and instructor proficiency checks, subject to specified conditions.

Comments: NATA states that the addition of language in proposed § 141.33(a)(2) appears to mandate the employment of dispatchers, aircraft handlers, or line service personnel. NATA contends the current language only requires that these personnel be trained ''if'' they are employed. HAI and NBAA echo NATA's opposition to this proposed rule. NATA also recommends that the current requirement for a part 141 school to provide a copy of the school's safety procedures and practices be reinstated in the new rule. Individual commenters, including a flight school, express the same concern.

The provisions in proposed paragraph (d) for designating a check instructor apparently confuse certain commenters who may be unsure whether it is an optional change or a mandatory change. One commenter asks for clarification regarding the intent, as well as whether the 50 students are to be enrolled at a given time or within the past year, and whether the proposal means a part 141 school with fewer than 50 students enrolled cannot conduct flight instructor proficiency checks and stage checks.

FAA Response: The FAA did not intend to mandate the employment of the personnel listed in paragraph (a)(2), only that, if employed, they be properly trained. The final rule modifies this language. The final rule also includes references in paragraph (a)(1) and (a)(3) to commercial pilots with a lighter-than-air-rating. In response to the commenter's concerns regarding paragraph (d), the FAA notes that the rule explicitly requires a student enrollment of at least 50 students at the time designation is sought. The FAA has determined that 50 students is the maximum for which one chief instructor or assistant chief instructor could reasonably provide checks, and, therefore, permits a pilot school or provisional pilot school to designate check instructors for conducting student stage checks, end-of-course tests, and instructor proficiency checks.

The proposed rule is adopted with these changes and other minor editorial changes.

Section 141.35 Chief instructor qualifications.

In Notice No. 95–11, the FAA proposed to delete the existing requirement that a person who applies for the position of chief ground instructor have 1 year of experience as a ground instructor at a certificated pilot school.

No substantive comments were received on this proposal. Paragraph (e) was added to the section in the final rule. This paragraph reflects the existing requirement in § 141.35(e), which provides that to be eligible for designation as chief instructor for a ground school course, a person must have at least 1 year of experience as a ground school instructor in a certificated pilot school. The FAA believes it is necessary for instructors to be more experienced. Except for this change and other editing and formatting changes, the final rule is adopted as proposed.

Section 141.36 Assistant chief instructor qualifications.

In this section, the FAA proposed to delete the existing requirement for a person who applies as an assistant chief ground instructor to have 1 year of experience as a ground instructor at a certificated pilot school.

No substantive comments were received on this proposal.

Upon further review, the FAA has decided to reinstate the requirement in existing § 141.36(e). However, this requirement has been modified to provide that to be eligible for designation as an assistant chief instructor for a ground school course, a person must have 6 months experience as a ground school instructor in a certificated pilot school, as opposed to the 1-year experience requirement in the existing rule. The proposed rule is adopted with this change, and other minor editing and formatting changes.

Section 141.37 Check instructor qualifications.

The FAA proposed to include the existing requirements of § 141.37, ''Airports,'' in proposed § 141.38. Proposed § 141.37, ''Check instructor qualifications,'' established the proposed qualifications required for a person to be designated as a check instructor.

The FAA proposed to permit certain schools approved under part 141 to designate check instructors to conduct stage checks and end-of-course tests, and instructor proficiency checks. The designated check instructors would be required to hold appropriate flight or ground instructor certificates.

Comments: A flight school states that the proposal is an ''excellent improvement'' that will facilitate completion of stage checks and end-of-course tests for large flight schools and reduce costs by not requiring assistant chief instructors to travel to FSDOs for testing and approval. The commenter also states it will reduce the workload of annual standardization for chief instructors of large flight schools.

Another commenter requests deletion of the proposed requirement under § 141.37(a)(2)(iii) that a check instructor hold a second-class medical certificate. A flight school commenter questions why only a chief instructor, and not a assistant chief instructor, can give the required proficiency test proposed in paragraph (a)(2)(vi).

FAA Response: References to medical certificate requirements in this section have been deleted from the final rule. For further discussion, see the analysis of § 61.23. After further review, the FAA has decided to permit the assistant chief to give a proficiency test. The assistant chief instructor was included as an individual able to give proficiency tests because, the FAA has determined that an assistant chief instructor has the qualifications necessary to give proficiency tests to check instructors. The final rule reflects this change.

Section 141.38 Airports.

The FAA proposed to include the requirements of the existing § 141.37 in this section. The proposed section also revised the existing rule by permitting pilot schools at airports used for night training flight in seaplanes to use adequate nonpermanent lighting or shoreline lighting approved by the Administrator. The FAA believes that the existing regulation for permanent lighting at all airports used by a pilot school for night training is not necessary at an airport or seaplane base used for night training flight. Adequate nonpermanent lighting or shoreline lighting is available for night seaplane takeoff and landing operations.

No substantive comments were received. Except for the addition of the word ''seaplane base'' in the provisions for seaplane training in the final rule and other editorial changes, the final rule is adopted as proposed.

Section 141.39 Aircraft.

In Notice No. 95–11, the FAA proposed to expand aircraft maintenance requirements and reformat this section.

Proposed paragraph (a)(2) revised the airworthiness certificate requirement. The existing rule requires a standard airworthiness certificate, except for aircraft used for flight instruction and solo flights in a course of training for agricultural aircraft operations, external load operations, and similar aerial work operations. The revised language was more general and required either a standard or primary airworthiness certificate, unless the Administrator determined that, due to the nature of the approved course, an aircraft without such a certificate may be used.

Proposed paragraph (a)(3)(i) stated that aircraft used by a pilot school certificate or a provisional pilot school certificate holder be maintained in accordance with subpart E of part 91. In proposed paragraph (a)(3)(ii), a new requirement was proposed. The school's aircraft were required to be maintained under an inspection program for each airframe, aircraft engine, propeller, appliance, and component part maintained. The details of the required inspection program were listed in proposed paragraph (b).

Proposed paragraph (a)(4) retained the existing requirement that aircraft used in flight training must be at least two-place aircraft with engine-power controls and flight controls easily reached and operated from both pilot stations.

Proposed paragraph (a)(5) required that the school's aircraft used for the demonstration of instrument skills be equipped and maintained for IFR operations.

Comments: NATA suggests deleting the new maintenance requirements for an ''inspection program'' contained in proposed § 141.39(a)(3) and (b). The commenter states that singling out part 141 aircraft is discriminatory and without safety benefits. NATA contends that this proposal would increase the cost of training at part 141 schools and may force many students to switch to part 61 training. HAI and NBAA voice similar concerns over this proposed rule.

GAMA also comments on proposed § 141.39 and states that it does not provide part 141 schools with the option of maintaining and inspecting their aircraft to part 91 standards. GAMA believes that part 91 maintenance requirements and inspections are adequate for this segment of the training industry. The commenter contends that the proposal would provide little benefit but would place a heavy financial burden on an important segment of the aviation industry.

An individual commenter states that the revised maintenance requirements would constitute a hardship for smaller schools; both the progressive inspection system and the system of 100-hour/annual inspections work well, the commenter states.

HAI and NBAA express concern about proposed § 141.39(a)(5), which requires that a school's aircraft used for the demonstration of instrument skills be equipped and maintained for IFR operations. NBAA states that most light helicopters used in instrument training, such as the Robinson R–22, are not certificated or economically capable of being certificated for IFR operations. These commenters suggest that the proposal be modified to ensure that the rule does not impact instrument training under VMC. Specifically, the commenters propose adding the following language: ''However, for instruction in the control and precision maneuvering of an aircraft by reference to instruments, the aircraft may be equipped as provided in the approved course of training. Aircraft not certified for IFR operations may be used for instrument training provided the flight is conducted under VMC.'' Individual commenters joined in HAI's concerns.

Several commenters reference the proposed and existing requirement for access from either pilot station to engine and flight controls. These commenters state that balloons do not have such controls, and that requiring easy access to flight controls prevents instruction in aircraft with throwover yokes, such as the Beechcraft Bonanza.

FAA Response: Commenters' concerns over the proposed inspection program were noted. Upon reviewing the issue, the FAA has decided not to adopt the proposal in the final rule. The inspection program was not proposed for other operations that engage in similar types of training under part 61, and would have increased costs with no commensurate safety benefit. The FAA has determined that compliance with subpart E of part 91 ensures an adequate level of safety. Furthermore, the proposal placed part 141 schools at an

unwarranted economic disadvantage. The concerns of HAI, NBAA, and others, regarding aircraft used for instrument training, also were considered. In response, the FAA has modified the requirement to apply only to aircraft used in a course involving IFR en route operations and instrument approaches. In response to comments on the required accessibility of flight controls, the words ''flight controls'' have been deleted to accommodate throwover yokes. The reference to ''two-place aircraft'' has been changed to ''two-pilot stations'' to include training in balloons. References to the proposed term ''supervised pilot in command'' have been replaced by ''solo'' as discussed in the analysis of § 61.1. The FAA also renumbered this section in the final rule.

The rule is adopted with these changes.

Section 141.41 Flight simulators, flight training devices, and training aids.

In Notice No. 95–11, the FAA proposed to change the title of the existing § 141.41, ''Ground trainers and training aids,'' to ''Flight training devices and training aids.'' The proposed section included no substantive changes.

Comments: A flight school refers to the proposed regulation on flight training devices as ''superfluous,'' stating that it leads to confusion. According to the commenter, flight training devices are well defined in ACs 120–40 and 120–45, as amended. The commenter states that referencing flight training devices in this section puts the FSDO at odds with the national simulator program. Another flight school states that the FAA is not doing enough to increase the use of flight training devices and simulators. The commenter proposes multiple levels of simulators and flight training devices, depending on the task being simulated.

FAA Response: The FAA recently published Amendment No. 61–100. The FAA has revised the title of this section to include flight simulators and revised the section to conform with the definitions of ''flight simulator'' and ''flight training device'' as set forth in that rule. The proposed rule is adopted with these changes. Those flight training devices previously approved under the provisions of this section may continue to be used, provided that they continue to meet the design criteria and functional requirements for which they were originally approved.

Section 141.43 Pilot briefing areas.

The FAA proposed formatting modifications for this section.

Comments: A balloon school operator objects to the wording in proposed paragraph (a) requiring ''use of a briefing area located at each airport,'' because balloon schools and some other types of flight schools may be located at an area other than an airport, or there may be off-airport briefing areas. The commenter requests that balloon schools be excluded from the requirement.

FAA Response: The FAA notes that the commenter refers to an existing requirement. The FAA did not propose to change this requirement, therefore any change would be beyond the scope of this rulemaking. The final rule is adopted as proposed.

Section 141.45 Ground training facilities.

Format modifications were proposed for this section. No substantive comments were received, and the final rule is adopted as proposed.

Subpart C—Training Course Outline and Curriculum

Section 141.51 Applicability.

No modifications were proposed for this section, and it is adopted as proposed.

Section 141.53 Approval procedures for a training course: General.

In Notice No. 95–11, the FAA proposed to change the title of this section. The proposal also required that two copies of each training course outline be submitted to the FAA instead of the three copies required under the existing rule. In addition, the proposal required that, commencing 1 year after the effective date of the rule, an applicant for a pilot school certificate or provisional pilot school certificate would only request approval for the new training courses. The FAA also proposed formatting changes to this section.

No substantive comments were received on this proposal. After further review, the FAA modified the proposal to delete proposed paragraph (c) and replace it with a provision that provides that a training course submitted for approval prior to the effective date of the rule shall, if approved, retain that approval for 1 year. The new provision further provides that an applicant for a pilot school certificate or provisional pilot school certificate may request approval of the training courses listed in 141.11(b). The FAA implemented this change in order to provide adequate time for existing part 141 schools, and schools that are in the process of obtaining approval, to add the new courses to and modify their school certificate.

The proposed rule was adopted with these changes.

Section 141.55 Training course: Contents.

In Notice No. 95–11, the FAA proposed to change the title of this section. In addition, the FAA proposed to permit pilot schools to seek approval of training courses that train to a performance standard and to modify a pilot school's quality of training requirements.

Section 141.55 (a), (b), and (c)

The FAA proposed formatting and editorial changes to these sections. No substantive comments were received on these changes.

Section 141.55(d)

The FAA proposed that, to apply for initial approval of a course that trains students to a standard, the school would be required to meet the following requirements: (1) hold a pilot school certificate and have held that certificate for at least the prior 24 calendar months; and (2) have an FAA inspector or designated examiner who is not an employee of the school give the practical test or knowledge test. Under the proposal, a school could not request approval for a period longer than 24 calendar months. In addition, the proposal required pilot schools to specify planned ground and flight training time requirements for these courses.

Comments: NATA strongly supports the FAA initiative of ''training to a standard'' in part 141. NATA, however, finds that the standards needed to meet the minimum-hour waiver vary in each local FSDO. The commenter feels that this creates unfair discrimination; therefore, NATA recommends that these standards be regulated and approved on a national level but maintained on a local level. GAMA also states that schools training to a standard should not be regulated by a local FSDO because it leads to a situation where one large part 141 school with multiple locations is regulated by several FSDOs, all with different requirements and interpretations of the regulations. GAMA also suggests regulating these schools at the national level with one FSDO appointed as ''lead'' for all locations. According to GAMA, a nationally standardized program would be much more beneficial to students and the training industry, and such a program would continue to provide a strong level of safety.

HAI expresses concerns about the requirements of proposed § 141.55(d). The commenter states that a small flight school may not have 10 students complete the course in the 24-month period, and therefore the school will be unable to have an approved course with less than the part 61 requirements. HAI suggests adding language to permit a school to petition the Administrator for provisional continuance for an additional 24-month period in order to allow a small school to remain competitive with a larger school.

FAA Response: In implementing this proposal, the FAA intends to monitor the approval process to ensure that a uniform national standard is maintained. FAA has added language to paragraph (d)(3) to clarify that a school may not hold examining authority for a training course conducted under this paragraph. Regarding HAI's concerns, if a school is unable to meet the training activity requirements of part 141 it would not be allowed to hold a pilot school certificate. Therefore, the rule is adopted as proposed.

Section 141.55(e)

Under the proposal, a school that received initial approval could receive final approval if the school had held initial approval for at least 24 calendar months and had trained at least 10 students for a pilot, flight instructor, or ground instructor certificate or rating, and at least 80 percent of those students passed the knowledge test or practical test on the first attempt. The test must have been conducted by an FAA inspector, or by a designated examiner who is not an employee of the school. Pilot schools also would be required to specify planned ground and flight training time requirements for the courses.

Comments: A pilot school comments that it is unclear whether paragraphs (d) and (e) require a practical test or a knowledge test to be administered by an FAA inspector, or an examiner who is not an employee of the school, for each applicant or at least 10 students in each course of training. The school recommends that the FAA inspector be required to administer the minimum number of tests necessary.

FAA Response: The FAA has added language to paragraph (e)(4) to clarify that a school may not hold examining authority for a training course conducted under this paragraph because the FAA's philosophy has been to maintain a system of checks and balances to ensure that the schools providing training do not have a conflict of interest with respect to the administering of the practical test. Therefore, in response to the commenter's question, all students must be examined by an FAA inspector or an examiner who is not an employee of the school.

The FAA deleted proposed paragraph (f) from the final rule because, after further review, the FAA has determined that this paragraph is unnecessary. The proposal is adopted with the changes discussed above, and other minor editorial changes.

Section 141.57 Special curricula.

No substantive changes were proposed for this section, and it is adopted with a minor editorial change.

Subpart D—Examining Authority

Section 141.61 Applicability.

In Notice No. 95–11, the FAA proposed format modifications to this section. No substantive comments were received on the proposal. Upon further review, the FAA has decided to retain the format of existing § 141.61.

Section 141.63 Examining authority qualification requirements.

In Notice No. 95–11, the FAA proposed to change the title of this section. The proposal also deleted the requirement that a specific number of graduates pass interim tests for the school to retain examining authority. The FAA proposed to modify the quality-of-training requirements for a pilot school with examining authority. The proposal required 90 percent of the graduates of a flight course, in which the school desires to obtain or retain examining authority, to pass a test on the first attempt, given by an FAA inspector or by a designated examiner who is not an employee of the school. In addition, the proposal specified that pilot schools would not receive examining authority for training courses that train to a performance standard.

Comments: GAMA and NATA oppose the proposal preventing schools that train to a standard from possessing examining authority. NATA states that the FAA has sufficient expertise and manpower to ensure oversight of these schools. GAMA notes that the FAA has granted examining authority to a number of schools that hold exemptions to train to a performance standard. GAMA suggests that § 141.63(b)(3) be modified to permit schools that train to a standard to use examining authority or include language ''grandfathering'' schools with current examining authority. A number of pilot schools and individual commenters join in objecting to the prohibition on examining authority for schools that train to a standard. Jeppesen-Sanderson also opposes this provision. The FAA has met with Jeppesen-Sanderson to obtain clarification of its position on this issue and other issues addressed in its comment.

One pilot school supports eliminating the interim check requirement for retention of examining authority.

FAA Response: After reviewing the comments, the FAA continues to believe that it is important to prohibit pilot schools that train to standard from possessing examining authority. Permitting these schools to have examining authority would not provide an adequate system of checks and balances. The proposal is adopted with minor editorial changes.

Section 141.65 Privileges.

The FAA proposed to permit a pilot school with examining authority to recommend graduates for all pilot, flight instructor, and ground instructor certificates. The proposal eliminated the restriction on examiners from performing practical tests for the flight instructor certificate, ATP certificate, and turbojet type ratings.

No substantive comments were received on this proposal. The proposal is adopted with minor editorial changes to delete those provisions also contained in § 141.67.

Section 141.67 Limitations and reports.

Section 141.67 (a), (b), (c), and (d)

The FAA proposed to delete the current requirement for a student at a pilot school with examining authority to complete all of the training course at the same school. The proposal permitted up to one-half of a student's credits to be transferred from another pilot school. The amount of credits that could be transferred would be based on the student's performance on a test given by the receiving pilot school.

Comments: A pilot school expresses agreement with the proposal based on the assumption that the school from which the student is transferring has examining authority. The school comments that a student could do all of the instrument training at one school, transfer to another school, take a final stage check and graduate from the commercial course of the second school, and never be tested according to the PTS on instrument flight skills.

FAA Response: After review of the proposed rule, the FAA has changed the references in paragraphs (d)(1) and (d)(2) from ''knowledge test'' to ''test'' to make the language consistent with the introductory language of paragraph (d).

Section 141.67(e)

The FAA proposed to revise the recordkeeping requirements of this section. The proposal required pilot schools with examining authority to maintain a record of all temporary airmen certificates it issues with a chronological listing of specific information. In addition, the school would be required to maintain a photocopy record containing each student's: (1) Graduation certificate; (2) airman application; (3) temporary airman certificate; (4) superseded airman certificate, if applicable; and (5) knowledge test and practical test results. The proposal also required that the school make the proposed record of all temporary airman certificates available to the Administrator upon request and to surrender the proposed record of all temporary airman certificates to the Administrator on expiration of each school's examining authority.

Upon further review, the FAA determined that a time limit for maintaining the records required by paragraph (e) should be added to the rule. Paragraph (e) is modified in the final rule to require that these records be maintained for 1 year. This is current FAA policy under Order No. 8700.1, ''General Aviation Operations Inspector's Handbook.''

Section 141.67(f)

The FAA proposed to require pilot schools with examining authority to submit each graduate's application for an airman certificate within 7 days after the graduate passes the required knowledge test or practical test.

Comments: A pilot school states that it may not always be possible to meet the 7-day requirement because a student may take the practical test without meeting all graduation requirements, for example, ground school may not be completed. The school believes that the requirement would place an undue hardship on the school and the student since all students would be attempting to take the final practical test at the same time.

FAA Response: Upon further review, the FAA has decided to delete the 7-day requirement from the final rule. The FAA notes that the schools should submit the required documents to the FAA in a timely fashion. The FAA also has retained the existing requirement for a school to submit a graduate's training record. In the final rule, the FAA added the training record to the list of documents that must be submitted after a student passes the knowledge test or practical test. The proposal is adopted with minor editorial changes.

Subpart E—Operating Rules

Section 141.71 Applicability.

No modifications were proposed for this section, and it is adopted as proposed.

Section 141.73 Privileges.

In Notice No. 95–11, the FAA proposed minor formatting and editing changes to this section.

The only substantive comments on this section concern the issue of examining authority for schools that train to a standard. These comments were addressed in the discussion of § 141.63. The proposal is adopted without change.

Section 141.75 Aircraft requirements.

In Notice No. 95–11, the FAA added the proposed test pilot and special operations courses to the list of courses for which an aircraft certificated in the restricted category may be used. The proposal also permitted the use of aircraft with a primary airworthiness certificate.

No substantive comments were received on this proposal. In the final rule, the term ''solo'' is substituted for the term ''supervised pilot in command'' for reasons discussed in the analysis of § 61.1. The proposed rule is adopted with this change and other minor editorial changes.

Section 141.77 Limitations.

In Notice No. 95–11, the existing reference to ''flight check or written test, or both'' was replaced with the phrase ''proficiency test or knowledge test or both''. The tests could include a flight check, a review of the student's aeronautical knowledge, or both. The FAA also proposed minor editing and formatting changes to existing provisions for the transfer of credits from one part 141-approved school to another part 141-approved school.

Comments: HAI comments on proposed § 141.77(c) regarding the transfer of credits. The commenter recommends retaining current rule language and states that 100 percent of a student's credits should transfer from one part 141 school to another. If the student is transferring from a school not certificated under part 141, then 50 percent of the credits should transfer.

The operator of a balloon school and repair station states that proposed § 141.77(c)(2), which provided that only previous training from a part 141-approved school could be credited in a transfer to a new school, would be a disincentive to students.

FAA Response: The FAA acknowledges the concerns of HAI and other commenters. The FAA notes that the provisions for the transfer of credits set forth in the proposed rule restate the existing requirements. However, in response to these concerns, the final rule includes a provision to allow for up to 25 percent credit for pilot experience and knowledge that was not obtained in a part 141-approved training course. The proposal is adopted with this change, and other minor editing and formatting changes.

Section 141.79 Flight training.

In Notice No. 95–11, the FAA proposed revisions to the instructor proficiency requirements of this section.

Proposed paragraph (c) required the assistant chief instructors, in addition to the chief instructor, to complete at least once every 12 calendar months, an approved syllabus of training consisting of ground training or flight training, or both, or an approved flight instructor refresher course.

Proposed paragraph (d) revised the flight and proficiency checks required of flight instructors.

Proposed paragraph (e) replaced the phrase ''designated chief instructor or his assistant'' with the language ''chief instructor, assistant chief instructor, or check instructor''. This change permitted the assistant chief instructor or check instructor, in addition to the chief instructor, to administer proficiency checks to a school's instructors.

Comments: HAI opposes the requirement in proposed § 141.79 that both the chief and assistant chief flight instructors must attend refresher training. HAI recommends retaining the current requirement that only the chief instructor must attend such training. The commenter also recommends the addition of the wording ''or an equivalent level of training acceptable to the Administrator,'' to allow schools to conduct their own approved refresher training for all instructors.

FAA Response: The final rule includes references to commercial pilots with a lighter-than-air rating in paragraphs (a), (b), and (d). With regard to HAI's comment, the rule does not require the chief or assistant chief flight instructors to attend a commercially sponsored refresher training course. It has always been the FAA's position that schools could develop their own refresher training for chief instructors or assistant chief flight instructors. These courses may be submitted to the FAA for approval. Regarding the proposal for the assistant chief instructor to receive annual training, the FAA believes that in light of the responsibilities and duties of the assistant chief instructor it is

necessary to require that person to maintain currency and proper qualification.

The proposed rule is adopted with these changes, and editing and formatting changes.

Section 141.81 Ground training.

The FAA proposed minor editorial and format changes to this section. The proposal also replaced the phrase ''designated chief instructor or his assistant'' with ''chief instructor'', ''assistant chief instructor'', or ''check instructor'', as appropriate.

No substantive comments were received on this section. The final rule includes references to commercial pilots with a lighter-than-air rating in paragraph (a). The proposed rule is adopted with this change.

Section 141.83 Quality of training.

The FAA proposed to reformat and revise the language of this section. The proposal also modified the quality of training requirements. Each pilot school or provisional pilot school was required to provide training that meets the requirements of § 141.5(d).

No substantive comments were received on this proposal, and it is adopted as proposed with minor editorial changes.

Section 141.85 Chief instructor responsibilities.

The FAA proposed to revise this section to clarify that the chief instructor serves in a supervisory role at a pilot school. The proposal replaced the existing requirements for the chief instructor to ''conduct'' checks and tests with language providing that the chief instructor is to ''ensure'' these checks and tests are accomplished. In addition, the FAA proposed paragraph (c) to permit the chief instructor to delegate authority for conducting stage checks, end-of-course tests, and flight instructor proficiency checks to the assistant chief instructor or a check instructor.

No substantive comments were received on this section. In paragraph (a)(2) of the final rule, the FAA replaced the term ''instructor'' with ''certificated flight instructor, certificated ground instructor, and commercial pilot with a lighter-than-air rating''. The final rule is adopted with this change and other minor editorial changes.

Section 141.87 Change of chief instructor.

The FAA proposed to revise this section to allow the assistant chief instructor to act in the capacity of the chief instructor for 60 days while awaiting the designation and approval of another chief instructor. The proposal permitted the assistant chief instructor or check instructor to perform stage checks and end-of-course tests during this time. Proposed paragraph (d) required a school to cease operations after 60 days if a new chief instructor has not been designated and approved. Proposed paragraph (e) set forth the provisions for reinstatement of the school's certificate.

No substantive comments were received on this section, and it is adopted as proposed with minor editorial changes.

Section 141.89 Maintenance of personnel, facilities, and equipment.

In Notice No. 95–11, the FAA proposed editorial modifications to this section. The FAA also added references to assistant chief instructor and check instructors to proposed paragraph (b).

No substantive comments were received on this section, and it is adopted as proposed with a minor editorial change.

Section 141.91 Satellite bases.

The FAA proposed minor editorial changes for this section. No substantive comments were received on this proposal, and it is adopted as proposed with minor editorial changes.

Section 141.93 Enrollment.

In this section, the FAA proposed to eliminate the requirement for a pilot school to send a copy of each enrollment certificate to the local FAA FSDO. However, the proposal required a school to maintain a monthly listing of persons enrolled in each course at the school.

Comments: NATA opposes the proposed rule's deletion of the prior requirement to furnish students with a copy of its safety procedures and practices, including items as specified in the existing § 141.93(a)(3).

FAA Response: The FAA inadvertently omitted existing paragraph (a)(3). This requirement is retained in the final rule. The proposed rule is adopted with this change.

Section 141.95 Graduation certificate.

Minor editorial modifications were proposed for this section.

Comments: A balloon school states that the requirement in proposed § 141.95(b)(7) that graduation certificates contain ''a statement showing the cross-country training the student received'' does not make sense, especially for balloon training, because virtually all training entails cross-country flight. The commenter states that the requirement should be deleted, because this information is already recorded in the school records and the student's logbook.

FAA Response: The commenter's concerns are noted; however, the disputed language is a continuation of an existing requirement. Except for minor editing changes, the final rule is adopted as proposed.

Subpart F—Records

Section 141.101 Training records.

The FAA proposed to reformat this section. No substantive comments were received, and, except for minor formatting and editing changes, the final rule is adopted as proposed.

Appendix A—Recreational Pilot Certification Course

In this appendix, the FAA proposed to establish criteria for a certification course for recreational pilot certificates. This addition was intended to encourage further general aviation training activity. The course in existing appendix A, ''Private Pilot Certificate Course (Airplanes),'' was moved to proposed appendix B. Under the proposal, a person was also required to hold a student pilot certificate prior to enrolling in the flight portion of the recreational pilot certification course.

The proposed course required a minimum of 20 hours of ground training on the same aeronautical knowledge areas that were proposed in part 61 for a recreational pilot certificate. The proposed course consisted of a minimum of 30 hours of flight training, including 15 hours of training from an authorized flight instructor and 3 hours of supervised pilot in command training. The proposal set forth specific areas of operation for each aircraft category and class rating.

The proposed course was designed to allow schools flexibility in developing their recreational pilot certification course with the individual student in mind. For example, a student who had previous aviation experience and proved particularly competent may be able to complete training for a recreational private pilot certificate with only the minimum 30 hours of flight training time, including the required 15 hours of flight training time from an authorized flight instructor and 3 hours of supervised pilot in command flight time. However, a student pilot who did not have previous aviation experience or who trained infrequently may need more time than the minimum specified hours of flight training time. The student pilot and flight instructor may need to tailor the training to include 27 hours of flight training time from an

authorized flight instructor and 3 hours of supervised pilot in command flight time, or some combination of those hours.

The FAA decided not to specify the maximum time that could be credited for stage checks and end-of-course tests for the approved training course requirements. The FAA believed that the individual school, along with the local FAA FSDO, were better able to determine how much time should be permitted for stage checks and end-of-course tests for each syllabus. After receiving course approval, the FAA and the school would continue to monitor the average length of time that it takes to conduct a specific stage check or end-of-course test, and would be prepared to modify the syllabus when needed.

Comments: EAA and NAFI support the addition of a recreational pilot certification course to part 141.

FAA Response: In the final rule, references to the proposed term ''supervised pilot in command'' are replaced with the term ''solo'' for the reasons discussed in the analysis of proposed § 61.1. The proposed term ''authorized flight instructor'' is replaced with the term ''certificated flight instructor'' to indicate that only instructors certificated under part 61 may provide the training specified in this section. Proposed paragraph (b) of section No. 2, which required that a signed and dated statement be affixed to the application for a recreational pilot certificate certifying that no known medical defect exists that would make the pilot unable to pilot an aircraft, is deleted from the final rule. As discussed in section IV, A of this preamble, § 61.23 of the final rule includes medical certificate requirements for student pilots who seek recreational pilot certificates.

Appendix B—Private Pilot Certification Course

The FAA proposed criteria for a certification course for a private pilot certificate for each aircraft category and class rating. The course in existing appendix B, ''Private Test Course (Airplanes),'' was eliminated.

Proposed appendix B included courses found in existing appendixes A and F. Proposed appendix B reflected the proposals in part 61 to establish a powered-lift category rating, and to establish separate class ratings for powered gliders and nonpowered gliders.

The FAA proposed to require that a person who desired to enroll in the flight portion of a course hold: (1) a student pilot certificate, and (2) a third-class medical certificate, or in the case of course of training for a glider or balloon rating, had a signed and dated application that the person had no known medical defects that made that person unable to pilot a glider or a balloon.

The proposed minimum ground training requirements consisted of the same aeronautical knowledge areas as proposed in part 61 for a private pilot certificate. The proposal set forth specific flight training requirements for each aircraft category and class rating. The proposed flight training requirements consisted of the same approved areas of operation proposed in part 61 for a private pilot certificate. The proposal included reductions in solo flight training time, but preserved the minimum total time requirements in the existing rule. As discussed in the analysis of appendix A, the proposed course was designed to allow schools flexibility in developing course requirements with the individual student in mind, the FAA proposed to permit each school to tailor the course requirements around the student's needs.

Existing appendix A requires an applicant for a private pilot certificate with an airplane category rating to perform five takeoffs and five landings at night, as the sole manipulator of the controls. The FAA proposed to require an applicant for a private pilot certificate with an airplane, rotorcraft, or powered-lift category rating to receive at least 3 hours of night flight training, including one cross-country flight, and to perform 10 takeoffs and 10 landings at night. The proposal included the provisions of proposed § 61.110 of this chapter that exempt certain applicants from the night flying certification requirements.

The proposal also required private pilot applicants for an airplane, powered-lift, and airship rating to complete at least 3 hours of instrument training in the same category and class of aircraft for which the rating is sought.

As noted in appendix B, the FAA decided not to specify the maximum time that could be credited for stage checks and end-of-course tests.

Comments: NATA states that there is no safety evidence to support the requirement in proposed paragraph (2)(a) that a person have a student pilot certificate before enrolling in a part 141 private pilot certification course. The commenter believes that the current requirement to obtain the certificate prior to a student's first solo is adequate. NATA also opposes the reduction in allowable flight training device credit to 10 percent of the total flight training hour requirements. NATA recommends permitting a maximum of 5 flight hours or 15 percent of the approved private pilot course total-hour requirement to be credited, whichever is less.

HAI expresses concern that the proposed supervised pilot in command provisions require students to perform maneuvers involving emergency procedures. A flight school states that the 5-hour minimum supervised pilot in command requirement is inadequate for airplane single-engine and multiengine courses. The commenter suggests 7 hours, with at least two cross-country flights to different locations, and landings at three airports for each cross-country flight. Several flight schools and individual commenters express similar concerns regarding the reduced solo and cross-country time requirements. One flight school recommends at least 10 hours of solo time. Another flight school commenter opposes the proposed requirement for 3 hours of instrument training, stating that this is an especially heavy burden on part 141 schools transitioning students to instrument training immediately upon completion of the private pilot curriculum. This commenter requests permitting part 141 students to complete the requirement in simulators.

Jeppesen expresses concern regarding the overall principle of class-specific training in appendixes B through J. The commenter is concerned that the new system removes any remaining flexibility in part 141 regarding aircraft usage, effectively requiring flight schools, for economic reasons, to offer their courses as either all single-engine courses or all multiengine courses. According to the commenter, this could place part 141 schools at a disadvantage compared to part 61 schools, which retain greater flexibility.

A balloon school objects to the term ''balloonport'' in proposed paragraph (4)(c)(9) because it is not a standardized term, and is a proprietary name for a balloon dealership. The term ''Airport and balloon launch site operations'' is suggested.

FAA Response: In response to NATA's comment regarding the requirement that an individual hold a student pilot certificate before enrolling in a part 141 private pilot certification course, the FAA has determined that this requirement is not unduly burdensome. Under § 61.23, a student pilot is required to obtain a third-class medical certificate once he or she conducts solo flight in an aircraft other than a glider or a balloon.

The objections of some commenters to the reduction in solo flight time required were considered, but the FAA has determined that safety will not be

compromised by a reduction in solo flight time because the total number of hours remains unchanged. The FAA also notes that schools will have more discretion in determining how best to use required training time.

In the final rule, the FAA deleted any requirement for solo flight training in a multiengine aircraft. The final rule requires a student to perform the functions of a pilot in command while under the supervision of a certificated flight instructor. A flight instructor may therefore accompany a student on board the aircraft during this flight time. The FAA notes that solo time in a multiengine aircraft may be impractical due to liability insurance concerns.

The helicopter and gyroplane solo cross-country provision is clarified to require that at least one segment of the flight include a straight-line distance of at least 25 nautical miles between the takeoff location and landing location.

In response to HAI's comment regarding the performance of emergency maneuvers without an instructor on board the aircraft, the FAA notes that other training maneuvers, such as stalls and slow flight, are routinely performed in solo flight by pilot applicants that, when improperly performed, may result in situations that adversely affect the safety of the flight. The FAA contends that these maneuvers, when properly performed, pose no adverse risks to the safety of the flight. Flight instructors should ensure that emergency maneuvers, like other maneuvers, are only performed in solo flight after an instructor determines that such maneuvers may be safely performed by the applicant and under any restrictions that the flight instructor may establish to ensure the safety of the flight.

The FAA has deleted from the final rule the exception to the night training requirement because the exception applies to the individual airman rather than to the course. The FAA also has removed medical certificate requirements from this appendix because these requirements are addressed in § 61.23.

Proposed provisions for separate powered and nonpowered classes within the glider category requirements are consolidated under a single set of requirements for the glider category for reasons discussed in section IV,F.

In the final rule, the FAA has decreased the ascent training requirements from 5,000 feet above the surface to 3,000 feet above the launch site for gas balloons, and from 3,000 feet above the surface to 2,000 feet above the launch site for balloons with airborne heaters. After further review, the FAA has determined that the proposed ascent training procedures exceeded normally accepted industry practices. Additionally, the FAA deleted solo flight requirements for a rating in a gas balloon and an airship. In the final rule, the student is not required to meet any solo flight training requirements, and must perform the duties of pilot in command while under the supervision of a commercial pilot with the appropriate lighter-than-air rating. This change was adopted because insurance companies would not permit solo flights in gas balloons or airships by student pilots.

In response to concerns about the use of the word ''balloonport,'' that term has been deleted from the final rule. The FAA determined that ''balloonport'' is not a commonly used term, and has replaced it with the term ''airport''.

The FAA has modified the appendix to conform with the definitions of ''flight simulator'' and ''flight training device'' set forth in Amendment No. 61–100. In response to the objections concerning credit for flight simulator and flight training device time, the maximum possible credit for flight simulators that meet the requirements of § 141.41(a) is 15 percent in the final rule. The maximum possible credit for flight training devices that meet the requirements of § 141.41(b) is 7.5 percent in the final rule. These changes correct an inadvertent reduction in the time that could be credited for training received in a flight simulator or flight training device when the FAA changed the basis on which flight time could be credited form hours to a percentage of the flight training time. The FAA also notes that training received in a flight simulator or flight training device may not be used to satisfy more than 15 percent of the flight training requirements in the final rule.

In the final rule, references to the proposed term ''supervised pilot in command'' are replaced with the term ''solo'', where appropriate, for the reasons discussed in the analysis of § 61.1. The proposed term ''authorized instructor'' is replaced with ''certificated flight instructor or commercial pilot with a lighter-than-air rating'', as appropriate, because the term ''authorized instructor,'' while applicable to part 61, is too broad a term for use in part 141.

With regard to Jeppesen's concerns about class-specific training, the FAA notes that part 141 schools will not be placed at a disadvantage because training conducted under part 61 is also class specific.

The rule is adopted with these changes.

Appendix C—Instrument Rating Course

The FAA proposed criteria for an instrument rating course. The proposed appendix included courses found in existing appendixes C, F, and H, as well as courses for the proposed powered-lift, airship, airplane single-engine, and airplane multiengine instrument ratings.

To enroll in the flight portion of the course, the FAA proposed that a student hold: (1) a private pilot certificate with an aircraft category and class rating appropriate to the instrument rating for which the course applies, and (2) at least a third-class medical certificate.

The proposed ground training provisions included the same aeronautical knowledge areas as proposed in part 61 for an instrument rating, including windshear avoidance, and aeronautical decision making and judgment. The proposal retained the existing requirement for 30 hours of ground training for an initial instrument rating. The FAA also proposed a 30-hour ground training requirement for an initial instrument rating. The FAA proposed a requirement for 20 hours of ground training for an additional instrument rating, as opposed to the existing requirement of 15 hours in the test preparation course. The FAA believed the increase was necessary because of proposed reductions in the pilot experience requirements, and the different knowledge, skills, and abilities required for each instrument rating.

The proposal required flight training on the same areas of operation as proposed in part 61 for an instrument rating. In addition, the proposed appendix clarified the existing requirement for cross-country flight by requiring a minimum straight-line distance between airports for one of the segments of the flight.

A minimum of 35 hours of flight training time was proposed for initial instrument ratings. This is the minimum training time currently required for an instrument rating in an airplane or a helicopter. The proposal provided for a percentage of the minimum flight training hours to be obtained in a flight training device.

As discussed in appendix A, the FAA has decided not to specify the maximum time that may be credited toward the total hour course requirements for stage checks and end-of-course tests.

Comments: HAI states that a student should be able to concurrently enroll in private, instrument, and commercial pilot certification courses, and therefore the commenter recommends deletion of paragraph (2)(a). HAI also suggests modifying paragraph (b) of section No. 4 to require a minimum of 10 hours of

the instrument training time in an aircraft for an initial instrument rating, and a minimum of 5 hours of the instrument training time in an airplane for an additional instrument rating.

HAI, NATA, and NBAA object to the provisions for the crediting of time spent training in a flight training device. NATA and NBAA state that the 10 percent credit for the use of flight training devices is insufficient. The commenters argue that part 141 schools would be placed at a disadvantage compared to schools conducting training under part 61, and that trends in simulation technology dictate more, not less, use of flight training devices. NATA recommends a credit of 50 percent of the total flight training time of the approved instrument flight course or of the section, whichever is less. NBAA asks for clarification on whether the 10 percent credit for training in a flight training device also applies to recreational, private, and commercial certificates and, if so, the commenter recommends that those limits be changed to equal those authorized in part 61. NBAA also comments that Notice No. 95–11 does not go far enough to integrate personal computer-based aviation training devices into all phases of flight training. These views are echoed by several large flight schools, including ERAU and UND Aerospace, as well as Jeppesen and several individual commenters. These commenters state that the 10 percent limitation, especially in the case of the instrument rating, drastically reduces the maximum available credit in comparison to the existing rule. One commenter states that the proposed change would reduce the quality of training and raise costs. The commenter states that it can provide more quality training in Frasca 141 and 142 training devices than in aircraft.

GAMA is concerned that under the proposal it appears that the credit allowed for training received in a simulator or flight training device in an instrument rating course would be drastically reduced. According to GAMA, more flight training device credit would be received under part 61 than under the proposed rule for part 141. GAMA believes that this would discourage schools from applying for part 141 approval. GAMA recommends retaining the credit allowed under the existing rules.

HAI objects to the instrument helicopter cross-country requirement in proposed paragraph (4)(c)(3)(i) because training helicopters such as the Robinson R–22 are not certificated for IFR flight.

ERAU states that, while it agrees with the principle of separate requirements for single-engine and multiengine instrument ratings, the requirements for the proposed multiengine instrument rating course are excessive.

FAA Response: In response to HAI's comment regarding the requirement that pilots enrolling in an instrument rating course hold at least a private pilot certificate, the FAA determined that the minimum certificate level for persons to be able to adequately understand instrument training concepts is at the private pilot certificate level. With regard to HAI's concerns about the instrument helicopter cross-country requirements, the FAA notes that it is the FAA's intent to require a person to file an instrument flight plan and perform a flight under IFR, although not necessarily under IMC.

With respect to objections to proposed provisions for separate single-engine and multiengine airplane instrument ratings, the FAA notes that the separate instrument ratings were not adopted in the final rule. This decision was discussed in section IV,D. The proposed provision for an instrument airship rating is deleted from the final rule for the reasons discussed in section IV,D.

The FAA has modified the appendix to conform with the definitions of ''flight simulator'' and ''flight training device'' set forth in Amendment No. 61–100. Regarding comments on credit for training received in flight simulators and flight training devices, the FAA did not intend to remove the prior provision permitting up to one-half of the instrument training time to be received in an approved ground trainer. Therefore, the maximum possible credit allowed for training in a flight simulator that meets the requirements of § 141.41(a) is 50 percent in the final rule. The maximum credit for training in a flight training device that meets the requirements of § 141.41(b) is 25 percent in the final rule. The FAA also notes that training received in flight simulators or flight training devices may not be used to satisfy more than 50 percent of the instrument flight training requirements in the final rule.

The reference to medical certificate requirements in proposed paragraph (b) of section No. 2 is deleted because medical certificate requirements are now contained in § 61.23. See the analysis of § 61.23 for further discussion.

The proposed rule is adopted with these changes and other minor editorial changes.

Appendix D—Commercial Pilot Certification Course

The FAA proposed criteria for a certification course for a commercial pilot certificate. Proposed appendix D included courses found in the existing appendixes D and F. The proposed appendix included a powered-lift category rating and separate class ratings for powered gliders and nonpowered gliders.

To enroll in the flight portion of the course, the proposal required a person to hold: (1) a private pilot certificate with the category and class rating appropriate to the ratings for which the course applies, and (2) at least a third-class medical certificate, or present a signed and dated statement by the person certifying that the person enrolling has no known medical defect that makes that person unable to pilot a glider or a balloon.

In addition, if the course was for a rating in an airplane, a powered-lift, or an airship, the proposal required the student to: (1) hold an instrument rating appropriate to the aircraft category and class rating for which the course applies, or (2) be concurrently enrolled in an instrument rating course for which the course applies, and satisfactorily accomplish the required practical test prior to completing the commercial pilot practical test.

The proposed ground training consisted of the same aeronautical knowledge areas as proposed in part 61 for a commercial pilot certificate. A minimum of 100 hours of ground training was required for an airplane, powered-lift, or airship rating. One hundred hours of ground training is currently required for an airplane category rating. The proposal retained the existing hour requirements for ground training for a rotorcraft, glider, or balloon rating.

The proposed flight training included the same areas of operation as proposed in part 61 for a commercial pilot certificate. The proposal set forth specific flight training requirements for each aircraft category and class rating. The proposed minimum dual and solo flight training time requirements were far lower than those of the existing appendix D. However, this proposed change was based on the assumption that the applicant would have to also meet the minimum time requirements for part 61. The proposal required that a person meet the aeronautical experience requirements of part 61 for a commercial pilot certificate upon completion of the course. The proposed appendix also included the modifications to the dual cross-country flight requirements in proposed part 61.

The FAA decided not to specify the maximum time that may be credited for stage checks and end-of-course tests for

the same reasons discussed in the analysis of appendix A.

The FAA proposal omitted provisions related to flight instruction in the specified areas of operation for the lighter-than-air category ratings because separate instructor ratings were proposed for those classes.

Comments: HAI states that a student should be able to concurrently enroll in a private, instrument, and commercial pilot certification course.

The Department of Veterans Affairs/ Veterans' Benefits Administration (VA) states that it has received comments from pilot school organizations regarding Notice No. 95–11. These comments express a concern that appendix D would ''require a complete and radical restructuring of current commercial pilot courses.'' The commenter, nonetheless, recommends revising paragraph (2)(a)(4) to make its provisions clear, or that this issue be dealt with in the preamble. Several individual commenters state that the VA prohibits concurrent enrollment in separate flight training courses as permitted by the proposal.

HAI states that there are no advantages for part 141 schools if their students must meet part 61 flight training time requirements. GAMA and NATA express similar concerns and state that the proposal effectively increases the part 141 commercial pilot minimums from 190 hours to 250 hours. GAMA contends that since a private pilot certificate is a prerequisite for enrollment, the newly proposed commercial pilot certification course would not include the elements of the private pilot certification course currently allowed under part 141. NATA believes that the proposal to increase the minimum number of hours in the commercial pilot certification course could hurt the economic viability of many part 141 schools. Several flight schools and other commenters echo these concerns, stating that ''directed training'' at a part 141 school prepares applicants better than less regulated training under part 61, and makes the higher-hour requirement unnecessary for part 141 schools.

HAI opposes the provisions for the crediting of training received in a flight training device. HAI references similar comments it expressed on proposed appendix C. NATA recommends that the rule permit a credit for a maximum of 20 flight hours or 25 percent of the approved commercial pilot course, whichever is less. Flight schools and individual commenters express similar views.

HAI notes that the proposed helicopter cross-country requirements provide for a 250-nautical-mile flight, and recommends that these requirements be aligned with those of part 61. The commenter also expresses the same safety concerns regarding the helicopter night solo requirements that it expressed regarding similar requirements in part 61.

A balloon school expresses several objections to the commercial course requirements. The commenter states that no justification was presented for increasing the number of required flights from 8 flights in the existing rule to 10 flights. The commenter similarly opposes the requirement for two flights in a balloon in preparation for the practical test. The commenter also states that the terms ''weight and balance,'' ''air navigation facilities,'' ''performance maneuvers,'' and ''above the surface'' are inappropriate for balloon operations. The latter term should be replaced with the phrase ''above the launch site''. The same commenter also shares HAI's view that the proposed requirement for maneuvers involving emergency operations in solo flight is hazardous.

FAA Response: In the final rule, the required aeronautical knowledge training time has been modified. For the airplane category, powered-lift category, and airship class rating, the proposed 100 hours has been reduced to 65 hours. For the rotorcraft category, the proposed 65 hours have been reduced to 30 hours. For the glider category, the proposed 25 hours has been reduced to 20 hours. The balloon class rating requirement remains unchanged from the 20 hours proposed.

The FAA did not intend to remove the prior ability of pilots to obtain certificates under part 141 with less than the aeronautical experience requirements specified in part 61. The FAA therefore has withdrawn the requirement that graduates of a part 141 commercial pilot certification course meet the aeronautical experience requirements prescribed in part 61 for commercial pilots. This provision would have resulted in a major shift from the FAA's long standing position that part 141 graduates, even though they may not meet the requirements of part 61, have training equivalent to the training requirements of part 61. As a result of withdrawing this proposal, the FAA had to increase the aeronautical experience requirements from the requirements proposed in Notice No. 95–11. The final rule provides for 155 hours of total flight training time for an airplane, powered-lift, or airship rating; 115 hours of total flight training time for a rotorcraft rating; 6 hours of total flight training time for a glider rating; and 10 flight hours and eight training flights for a balloon rating. The FAA notes that a commercial pilot must hold a private pilot certificate in order to enroll in a commercial pilot certification course, therefore, the requirements in the final rule are equivalent to the current requirements of appendix D.

In the final rule, the FAA also has increased the dual flight training time requirements. The final rule provides for 55 hours of flight instruction for an airplane, powered-lift, or airship rating, and 30 hours of flight instruction for a rotorcraft rating. For a glider rating, the rule requires four hours of flight instruction, including five flights involving launch/tow procedures and the training on appropriate areas of operation. The flight training requirements for a balloon course remain as proposed, except the FAA has decreased the required ascent for gas balloons from 10,000 feet above the surface to 5,000 feet above the launch site. For balloons with airborne heaters, the ascent requirement was reduced from 5,000 feet above the surface to 3,000 feet above the launch site. After further review, the FAA has determined that the proposed ascent training procedures exceeded accepted industry practice.

The title of section No. 5 of this appendix is changed in the final rule from ''supervised pilot-in-command training'' to ''solo training''. As previously discussed, the FAA has decided to retain the term ''solo'' in the final rule. For the reasons previously discussed, the FAA has withdrawn the requirement for solo flight training in a multiengine airplane, an airship, and a gas balloon. The final rule requires a student to perform the functions of pilot in command in a multiengine aircraft while under the supervision of a certificated flight instructor, or in an airship or gas balloon while under the supervision of a commercial pilot with an airship rating or balloon rating, as appropriate.

The solo cross-country requirements for helicopter and gyroplane ratings are decreased in the final rule from 250 nautical miles to 50 nautical miles to conform with part 61 and existing part 141 requirements. The exception for cross-country flights in Hawaii was deleted in light of the reduction in the distance requirement. For the reasons discussed in the analysis of appendix B, the night flying exception of § 61.131 was removed from section No. 5.

The FAA has modified the appendix to conform with the definitions of ''flight simulator'' and ''flight training device'' set forth in Amendment No. 61–100. The maximum possible credit for flight training received in a flight

simulator that meets the requirements of § 141.41(a) is 20 percent in the final rule. For flight training devices meeting requirements of § 141.41(b), the maximum credit is 10 percent in the final rule. The FAA also notes that training received in flight simulators or flight training devices may not be used to satisfy more than 50 percent of the flight training requirements in the final rule.

For the same reasons discussed in the analysis of proposed § 61.129, category- and class-specific references to the required instrument training time for helicopters and gyroplanes are deleted in the final rule.

In the final rule, the proposed references to medical certificate requirements were removed, because medical certificate requirements are addressed § 61.23. See the analysis of that section for further discussion.

In response to HAI's proposal to permit student pilots to concurrently enroll in a private, instrument, and commercial pilot certification course, the FAA determined that the skills and knowledge gained in a private pilot certification course are necessary prerequisites to enrollment in an instrument or commercial pilot certificate course.

With respect to concerns expressed about concurrent enrollment in the commercial pilot course and the instrument rating course, the FAA notes that concurrent enrollment is not a requirement but an option an individual may choose to exercise, depending on his or her circumstances.

The proposed rule is adopted with these and other editorial changes.

Appendix E—Airline Transport Pilot Certificate Course

The FAA proposed criteria for a certification course for an ATP certificate with an airplane, helicopter, or powered-lift rating. The course in existing appendix E, ''Commercial Test Course (Airplanes),'' was eliminated. Proposed appendix E included requirements found in existing appendix H, and also included provisions for the proposed powered-lift category rating.

To enroll in the flight portion of the course, the FAA proposed that a person be required to: (1) Hold a commercial pilot certificate with the category and class ratings for which the course applies and hold no restrictions; (2) hold at least a third-class medical certificate; and (3) upon completion of the course, meet the aeronautical requirements in part 61 for an ATP certificate that is appropriate to the ratings for which the course applies.

The proposed ground training requirements consisted of the same aeronautical knowledge areas proposed in part 61 for an ATP certificate, including windshear avoidance, and aeronautical decision making and judgment. The course continued to require 40 hours of ground training.

The proposed flight training consisted of the same approved areas of operation as proposed in part 61 for an ATP certificate. The course continued to require 25 hours of flight training with at least 15 hours of instrument flight training. The FAA decided not to specify the maximum time that may be credited for stage checks and end-of-course tests for the same reasons previously stated in appendix A.

Comments: HAI opposes the proposal in paragraph (4)(b), which provides for the crediting of flight training received in a flight training device, and recommends that a minimum time of 10 hours in an aircraft be specified for an ATP course. Several other commenters, including some flight schools, stated that the 10 percent credit is insufficient.

A flight school commenter objects to establishing more stringent requirements for the ATP Certification Course than are normally necessary for training under part 61, and cites the requirement for 25 hours of flight training under part 141, when the average flight training under part 61, according to the commenter, is 10 hours. The commenter also cites the 40 hours of ground training under part 141, compared with no similar requirement under part 61.

FAA Response: The FAA has modified the appendix to conform with the definitions of ''flight simulator'' and ''flight training device'' set forth in Amendment No. 61–100. Upon review of concerns regarding the credit limitation on training received in a flight simulator or flight training device, the maximum possible credit allowed for training in a flight simulator that meets the requirements of § 141.41(a) is 50 percent in the final rule. The maximum credit for training in a flight training device that meets the requirements of § 141.41(b) is 25 percent in the final rule. The FAA notes that training received in flight simulators or flight training devices may not be used to satisfy more than 50 percent of the flight training requirements of the final rule. These changes were necessary to ensure that the credit provisions in the final rule correspond to the existing credit provision in appendix E.

As previously noted, the medical certification requirements are withdrawn because these requirements are addressed in § 61.23 of the final rule.

The FAA revised the proposed eligibility requirements for enrollment in an airline transport pilot certification course by modifying proposed paragraph (c) of section No. 2 to indicate that an applicant must comply with the requirements of subpart G of part 61 prior to enrollment and not upon course completion as originally proposed. The FAA has also retained the proposal set forth in proposed paragraph (a)(2) of section No. 4 to require at least 25 hours of flight training on the approved areas of operation. Fifteen hours of this training is instrument training. The FAA notes that these requirements are more stringent than those specified in part 61, however, the FAA also notes that a school may obtain approval for a course with fewer hours if the course is approved in accordance with the provisions of § 141.55.

The final rule is adopted with these changes and minor editing and formatting changes.

Appendix F—Flight Instructor Certification Course

The FAA proposed to establish a separate appendix for flight instructor certification courses. The proposed appendix included the proposals in part 61 to establish: (1) A powered-lift category rating, (2) separate class ratings for powered gliders and nonpowered gliders, and (3) a flight instructor certificate for the lighter-than-air category.

To enroll in the flight portion of the course, the FAA proposed that a person must hold: (1) A commercial certificate or an ATP certificate with an aircraft category and class rating appropriate to the rating for which the course applies, and (2) an instrument rating in an aircraft that is appropriate to the aircraft category and class for which the course applies if the course was for an airplane, airship, or powered-lift instructor rating.

The proposed ground training consisted of the same aeronautical knowledge areas as proposed in part 61 for a flight instructor certificate. The course continued to require a minimum of 40 hours of ground training for an initial flight instructor certificate and 20 hours for an additional flight instructor rating.

The proposed flight training consisted of the same areas of operation as proposed in part 61 for a flight instructor certificate. The minimum hours of required flight training varied with the category or class of aircraft. A course for a rating in an airplane, a rotorcraft, a powered-lift, or an airship required a minimum of 25 hours of training. A course for a rating in a powered glider required 10 hours of

training. A course for a rating in a nonpowered glider required 10 hours of training and 10 training flights. A course for a balloon class rating required 8 training flights.

Comments: HAI recommends that the flight instructor course requirement in paragraph (2)(a) of appendix F be revised to require an applicant to either hold a commercial certificate, or be concurrently enrolled in a commercial course and an instrument rating course.

With regard to the minimum hour requirements for the flight instructor certification course, NATA states that the proposed minimum aeronautical training hours are insufficient while the proposed flight training hours are excessive. NATA recommends that the aeronautical training requirement be increased to 60 hours.

NBAA states that the requirement, proposed in paragraph (5)(b) of appendix F, that all airplane flight instructor candidates receive spin training, may be impossible to comply with in the case of multiengine airplanes because few, if any, multiengine airplanes are certificated for spins. NBAA proposes changing the wording to require only ground training, not flight training, for spins in airplanes other than gliders and single-engine airplanes.

In its comment, FSI recommends a reduction to 15 hours for flight training required for the addition of an airplane single-engine or multiengine class rating to a flight instructor certificate. The commenter states that it conducts a 12-hour part 61 flight instructor multiengine add-on course, as well as a flight instructor instrument rating add-on course to the flight instructor certificate. Jeppesen states that reducing the part 141 hour requirement would encourage students to train under an FAA-approved part 141 course instead of under part 61.

University of North Dakota Aerospace (UND) recommends training conducted to a proficiency level rather than to a specific flight-hour requirement for the flight instructor certification course. ERAU also objects to the mandated hours, and states that the FAA should set forth the material to be taught and permit the school to propose the required hours for FAA approval. ERAU states that the appendix is unclear on how or what constitutes an original issuance of a certificate. The ability to issue two ratings on one certificate at one time allows for an economy of time and of expense for students. Training to a standard could also save students considerable time and money.

A balloon school operator states that the 40 hours of training specified in paragraph (3)(a)(1) of appendix F is excessive for balloons because applicants for the instructor rating will already hold a commercial certificate, and instruction will be focused on the fundamentals of instructing, which ''can be effectively taught in 5 hours.'' According to the commenter, this also applies to the material contained in ''Areas of Operation'' in paragraph (4)(c)(9) of appendix F. The same commenter states that the requirement for eight flights in paragraph (4)(a)(4) of appendix F is a meaningless measure for balloons because of the variability of flight time. The commenter recommends that the requirement be specified in hours instead, and proposes 4 hours for this purpose. Finally, this commenter objects to the use of the term ''performance maneuvers'' in paragraph (4)(c)(9)(ix) of appendix F because the term has no meaning for balloons.

FAA Response: In the final rule, references to the proposed term ''supervised pilot in command'' were replaced with the term ''solo'' for reasons discussed in the analysis of § 61.1. Proposed provisions for separate powered and nonpowered classes, within the glider category requirements, have been consolidated under a single set of requirements for the glider class for the reasons discussed in section IV, F. The establishment of a flight instructor certificate for the lighter-than-air category has not been adopted in this section for the reasons outlined in section IV, C.

In response to comments regarding the proposal for an applicant for a flight instructor rating in a rotorcraft to possess an instrument rating, the FAA has determined that such a requirement is not warranted, and has withdrawn that proposal from the final rule.

In response to NATA's comment that the aeronautical knowledge requirement should be increased to 60 hours, the existing rule requires 40 hours. The FAA did not propose raising this requirement, and therefore NATA's recommendation is beyond the scope of this rulemaking. In response to NATA's complaint that the proposed flight training hours are excessive, the FAA points out that this is an existing requirement.

Regarding NBAA's comment concerning spin training in multiengine airplanes, the FAA agrees that few multiengine airplanes are certificated for spins. It was never required or proposed for this training to be conducted in a multiengine airplane. This requirement can be accomplished in a single-engine aircraft that is certificated for spins.

The FAA has reviewed the comments requesting a reduction in the hour requirements for flight training and finds that the comments have offered no significant justification for reducing these hours. Furthermore, the FAA notes that the training requirements reflect the current requirements in appendix H.

The FAA also notes that the eligibility requirements for enrollment in a flight instructor certification course were clarified to reflect that an ATP seeking a flight instructor certificate possess instrument privileges in the aircraft category and class appropriate to that certificate.

In response to the comment from a balloon school operator, the FAA notes that all flight instructor ratings for the lighter-than-air category have been withdrawn as previously discussed.

The FAA has also modified the appendix to conform with the definitions of ''flight simulator'' and ''flight training device'' set forth in Amendment No. 61–100.

The rule is adopted with these changes.

Appendix G—Flight Instructor Instrument (for an airplane, helicopter, or powered-lift instrument instructor rating) Certification Course

The FAA proposed a separate appendix addressing certification courses for a flight instructor certificate with an instrument rating. This proposed appendix included the proposals in part 61 to establish: (1) A powered-lift category and instrument rating, (2) an instrument rating for airships, (3) instrument ratings for single-engine and multiengine airplanes, and (4) a flight instructor certificate for the lighter-than-air category.

To enroll in the flight portion of the course, the FAA proposed that a person hold: (1) a commercial certificate or an ATP certificate with an aircraft category and class rating appropriate to the rating for which the course applies, and (2) a flight instructor certificate with an aircraft category and class rating that is appropriate to the instrument rating for which the course applies.

The proposed course required a minimum of 15 hours of ground training on the same aeronautical knowledge areas as proposed in part 61 for a flight instructor certificate. The proposed course also required a minimum of 15 hours of flight training on the same approved areas of operation as proposed in part 61 for a flight instructor certificate.

Comments: HAI recommends that the flight instructor course requirement in

paragraph (2)(a) of appendix G be revised to require a person to either hold a commercial pilot certificate or be concurrently enrolled in a commercial course and instrument rating course. HAI opposes the ratio by which time spent training in a flight training device is credited, and recommends deletion of the subparagraphs of paragraph (4)(b) of appendix G.

In its comment, NATA recommends deletion of paragraph (2)(b) of appendix G, and requests that the FAA address initial and add-on training requirements in a similar fashion to proposed paragraphs (3)(a)(1) and (3)(a)(2) of appendix F. This would allow applicants to receive an instrument flight instructor certificate without holding a flight instructor certificate. To this end, NATA recommends a minimum of 45 hours of aeronautical knowledge training for initial flight instructor applicants, and 15 hours for additional flight instructor ratings.

UND objects to the economic burden resulting from the establishment of separate single-engine and multiengine instrument instructor ratings, and questions what the conversion process would be for current multiengine instrument instructors.

FAA Response: In the final rule, references to the proposed terms ''supervised pilot in command'' were replaced with the term ''solo'' for reasons discussed in the analysis of § 61.1. The establishment of an instrument flight instructor rating for the lighter-than-air category has not been adopted in this section for the reasons outlined in section IV,C. Similarly, the proposed separation of single-engine and multiengine instrument instructor ratings has not been adopted for the reasons presented in section IV,D.

In response to HAI's comment recommending that the eligibility provisions of paragraph (2)(b) be revised to permit instrument flight instructor applicants to be concurrently enrolled in a commercial pilot certification and instrument rating courses, the FAA did not propose any changes to the current eligibility requirements that are now contained in existing appendix H. In addition, the FAA questions the benefit of HAI's recommendation to permit an applicant to be concurrently enrolled in three different training courses. The FAA believes that if an applicant were permitted to be enrolled concurrently in a commercial pilot certification course, instrument rating course, and flight instructor-instrument rating course, the applicant would be unable to obtain benefits comparable to enrolling in each course individually.

In response to HAI's recommendation that the FAA revise the provisions for crediting training time received in a flight training device to meet training requirements, the FAA notes that the purpose of establishing percentage computations was to encourage those schools that desire to submit courses that ''train to a standard.'' The FAA has determined that for courses with less than the minimum training hour requirements of part 141, a specific ratio between time spent in an aircraft and time spent in a flight training device should be maintained. The FAA has also modified the appendix to conform with the definitions of ''flight simulator'' and ''flight training device'' set forth in Amendment No. 61–100.

The FAA has considered NATA's comments and decided to withdraw the requirement that a person must hold a flight instructor certificate prior to enrolling in a flight instructor-instrument certification course. The FAA recognizes that it is possible under existing rules for an individual to obtain an instrument flight instructor certificate with an instrument-instructor rating without holding a flight instructor certificate. The FAA also notes that the eligibility requirements for enrollment in a flight instructor-instrument certification course were clarified to reflect that an ATP seeking a flight instructor certificate with an instructor-instrument rating possess instrument privileges in the aircraft category and class appropriate to that certification. The rule is adopted with these changes and other minor editorial and format changes.

Appendix H—Ground Instructor Certification Course

The FAA proposed to establish criteria for approval of a certification course for a ground instructor certificate. An equivalent course is not found in existing part 141 or part 143.

This proposed appendix included the proposals in part 61 to: (1) Revise ground instructor ratings, (2) establish a powered-lift category rating, (3) establish separate class ratings for powered gliders and nonpowered gliders, (4) establish an instrument rating for airships, and (5) establish instrument ratings for single-engine and multiengine airplanes.

The proposed course required ground training on the same aeronautical knowledge areas as proposed in part 61. A person who enrolls for an initial ground instructor certificate was required to receive a minimum of 20 hours of ground training. A person who enrolls in an additional ground instructor rating was required to receive a minimum of 10 hours of ground training. Existing appendix H, ''Flight Instructor Certification Course,'' contained a provision that stated that initial ground training requirements could be lowered by one-half if an applicant had prior related instructional experience. Notice No. 95–11 proposed to apply this provision to ground instructors as well.

No substantive comments were received. In the final rule, the proposed ground instructor ratings were deleted and replaced with the ground instructor ratings provided for in existing part 143—basic, advanced, and instrument. For a discussion of the reasons for these changes to the final rule, see the analysis of subpart I of part 61. The appendix is adopted with these changes.

Appendix I—Additional Aircraft Category or Class Rating Course

The FAA proposed to establish criteria for certification courses for adding either a category rating or a class rating on a pilot certificate. The course in this appendix appeared in sections II and III of existing appendix F. The proposed appendix included the proposals to establish a powered-lift category rating as well as separate class ratings for powered and nonpowered gliders.

The FAA proposed that to enroll in the flight portion of the proposed course, a person would be required to hold: (1) The minimum level pilot certificate that is appropriate to the additional category or class aircraft rating to which the particular course applies, and (2) at least a third-class medical certificate for aircraft ratings that require a medical certificate for that pilot certificate level. To obtain an additional rating at the recreational pilot certificate level or an additional glider or balloon rating, applicants would have to provide a signed and dated statement certifying that they have no known medical defects that would make them unable to pilot a glider or a balloon.

Each course approved under this appendix was required to consist of the minimum requirements found under appendix A, B, C, D, or E for the category rating or class rating for which the course was approved at the appropriate pilot certificate level.

No substantive comments were received. This appendix is being included in the final rule with changes that reflect the elimination of the separate glider classes, as explained in section IV,F. The appendix also reflects changes in the current definitions of ''flight simulator'' and ''flight training device,'' and other minor terminology changes. The references to medical

certificates in proposed section No. 2 were deleted because medical certificate requirements are now contained in § 61.23. See the analysis of § 61.23 for further discussion. The proposed rule is adopted with the changes discussed above, as well as minor formatting and editing changes.

Appendix J—Aircraft Type Rating Course, for Other Than an Airline Transport Pilot Certificate

The FAA proposal established criteria for an aircraft type rating course, for other than an ATP certificate, for a person who desires to add a type rating on his or her private or commercial pilot certificate. The proposed course in this appendix was found in existing appendix F. The course included provisions for the powered-lift category rating as proposed in part 61.

The FAA proposed that to enroll in the flight portion of the proposed course, a person must hold: (1) At least a private pilot certificate; (2) at least a third-class medical certificate, if a medical certificate is required for the type of aircraft rating sought; and (3) an instrument rating, or be concurrently enrolled in a course for an instrument rating in the category and class that is appropriate to the aircraft type rating for which the course applies (if the aircraft does not hold a VFR limitation). A person who is concurrently enrolled in a course for an instrument rating would be required to satisfactorily accomplish the required practical test concurrently with the aircraft type rating practical test.

A minimum of 15 hours of ground training was proposed. A minimum of 25 hours of flight training was proposed, of which at least 15 hours was required to be instrument flight training in the aircraft for which the course applied.

Comments: UND Aerospace reiterates its view, as expressed with respect to appendixes F and G, that there should be no specific hourly training requirement because training should be conducted to a proficiency level. The commenter also recommends revising the language of paragraph (4)(a)(1) to include a reference permitting the use of a flight training device instead of an aircraft.

FAA Response: Upon further review of this appendix, the FAA noted an error in the proposed ground and flight training hour requirements. The proposed requirements of 15 hours of ground training and 25 hours of flight training exceeded existing training requirements. The FAA has determined that there have been no safety problems to require such an increase in training time. Therefore, the final rule reflects the existing requirements of 10 hours of ground training and 10 hours of flight training.

In response to UND's recommendation that this appendix should not provide any specific hourly training requirements, the FAA notes that § 141.55 permits a school to submit a course for approval that contains less training time than in part 141. With regard to UND's recommendation to permit the use of flight training devices, the FAA notes that this appendix provides for the crediting of training time received in flight simulators and flight training devices that meet the requirements of § 141.41 (a) and (b). Flight simulators may be used to receive credit for up to 50 percent of the total flight training hour requirements of this appendix, and flight training devices may be used to receive credit for up to 25 percent of the total flight training requirements of this appendix. The FAA notes that training received in flight simulators and flight training devices may not be used to satisfy more than 50 percent of the flight training requirements of the final rule.

The final rule deletes proposed paragraph (b) of section No. 2, which referred to medical certificates because the medical certificate requirements are included in § 61.23. See the analysis of that section for further discussion.

The proposed rule is adopted with these changes and other minor editorial changes.

Appendix K—Special Preparation Courses

The FAA proposed to establish criteria in appendix K for special preparation courses, similar to those in existing appendix H, ''Test Preparation Courses.'' These proposed courses were similar to the existing test preparation courses, but expanded the concept of specialized courses. The proposed appendix included the proposals in part 61 to: (1) certificate ground instructors under part 61, (2) revise aeronautical knowledge areas, and (3) set forth approved areas of operation.

The proposed appendix included: (1) flight instructor refresher courses, (2) ground instructor refresher courses, (3) special operations courses, and (4) test pilot courses.

The FAA proposed that to enroll in the flight portion of the proposed courses, a person must hold a pilot certificate appropriate to the operating privileges or authorization sought. For example, if after graduation the person operates an aircraft under part 133, ''Rotorcraft External-Load Operations,'' that person was required to hold at least a commercial pilot certificate with a rotorcraft-helicopter rating. Each student enrolled in these courses was required to satisfactorily accomplish stage checks and end-of-course tests to graduate.

The FAA also proposed to require that a person enrolling in the flight portion of the course hold at least a third-class medical certificate, if a medical certificate was required in part 61 of this chapter, or a signed and dated statement by the person certifying that the person enrolling had no known medical defect that makes that person unable to pilot a glider or a balloon.

The proposed agricultural aircraft operations required a minimum of 25 hours of ground training and 15 hours of flight training as found in section No. 8 of existing appendix H. This proposal eliminated the option in appendix H to include up to 5 hours of supervised pilot in command practice. The ground training requirements were clarified and expanded to include training on: (1) Agricultural aircraft operations; (2) safe operating procedures for handling and dispensing agricultural and industrial chemicals, including operating in and around congested areas; and (3) applicable provisions of part 137. The flight training requirements were clarified to include training on agricultural aircraft operations.

The proposed course on rotorcraft external-load operations continued to require a minimum of 10 hours of ground training and 15 hours of flight training, as found in section No. 9 of existing appendix H. The ground training requirements include: (1) Rotorcraft external-load operations; (2) safe operating procedures for external-load operations, including operating in and around congested areas; and (3) the applicable provisions of part 133. The flight training requirements include training on external-load operations.

The FAA proposed to establish basic criteria for a test pilot course. The proposed course requirements included ground training on the following: (1) Aircraft maintenance, quality assurance, and certification test flight operations; (2) safe operating practices and procedures for performing aircraft maintenance, quality assurance, and certification test flight operations; (3) applicable parts of the FAR that pertain to aircraft maintenance, quality assurance, and certification tests; and (4) test pilot duties and responsibilities. The course also required a minimum of 15 hours of flight training on test pilot duties and responsibilities.

The FAA proposed to establish minimum criteria for special operations courses, including pipeline patrol, shoreline patrol, and aerial

photography. The requirements of each course were not specifically designated. The intent of the proposal was to provide an incentive to, and flexibility for, part 141 pilot schools to develop specialized courses and improve business opportunities.

The FAA proposed to revise the pilot refresher course in section No. 7 of existing appendix H. The course continued to require 4 hours of ground training and 6 hours of flight training. The proposed course did not specifically include the current option for up to 2 hours of the 6 hours to be directed solo practice, but permitted the school more flexibility in designing a syllabus that best fits each student's needs. The ground training requirements included: (1) Aeronautical knowledge areas that are applicable to each student's pilot certificate level, aircraft category and class rating, or instrument rating, as appropriate; (2) safe pilot operating practices and procedures; and (3) applicable provisions of parts 61 and 91 for pilots. The flight training requirements were clarified to include flight training on the approved areas of operation that are applicable to the level of each student's pilot certificate, aircraft category and class rating, or instrument rating, as appropriate, for performing pilot in command duties and responsibilities.

On April 6, 1994, the FAA issued Amendment No. 61–95, ''Renewal of Flight Instructor Certificates'' (59 FR 17646). In that final rule, the FAA revised § 61.197(c) by deleting the current 24-hour requirement for an approved flight instructor refresher course. In this appendix, the FAA proposed establishing a flight instructor refresher course consisting of at least 16 hours of ground training, flight training, or any combination of ground and flight training. The ground training included the: (1) Aeronautical knowledge areas of part 61 that apply to student, recreational, private, and commercial pilot certificates and instrument ratings; (2) aeronautical knowledge areas that apply to flight instructors; (3) safe pilot operating practices and procedures, including airport operations and operating in the NAS; and (4) applicable provisions of parts 61 and 91 that apply to holders of pilot and flight instructor certificates. The flight training course included a review of the: (1) approved areas of operations that are applicable to student, recreational, private, and commercial pilot certificates and instrument ratings; and (2) necessary skills, competency, and proficiency for performing flight instructor duties and exercising flight instructor responsibilities.

In addition, the FAA proposed criteria for ground instructor refresher courses. The proposed contents of this course required ground training on: (1) Aeronautical knowledge areas of part 61 that apply to student, recreational, private, and commercial pilot certificates and instrument ratings; (2) aeronautical knowledge areas of part 61 that apply to ground instructor certificates; (3) safe pilot operating practices and procedures, including airport operations and operating in the NAS; and (4) applicable provisions of parts 61 and 91 that apply to pilots and ground instructor certificates.

Comments: A balloon school opposes proposed paragraphs (11) and (12) of the special preparation flight instructor and ground instructor refresher courses, which require 16 hours of ground and/or flight training. The commenter states that, for balloon instructor training, such a course can be completed in 4 hours, and no flight training is necessary.

FAA Response: The FAA acknowledges the balloon school's concerns. As discussed in section IV,C, the FAA is not adopting the proposed flight instructor certificate for the lighter-than-air category, and therefore the proposed appendix requirements would not apply to that school's instructors under the final rule.

In the final rule, the medical certificate requirements for eligibility for a course under this appendix have been deleted because medical certificate requirements are now contained in § 61.23. See the analysis of § 61.23 for further discussion. Additionally, the FAA has modified the appendix to conform with the definitions of ''flight simulators'' and ''flight training device'' set forth in Amendment No. 61–100.

Appendix L—Pilot Ground School Course

In proposed appendix L, the FAA set forth the requirements for the Pilot Ground School course found in existing appendix G. The proposal included an additional general requirement that ground training include those aeronautical knowledge areas needed to ''develop competency, proficiency, resourcefulness, self-confidence, and self-reliance in each student.''

No substantive comments were received, and except for minor editorial changes, the final rule is adopted as proposed.

Regulatory Evaluation Summary

Cost Benefit Analysis

The FAA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' This section has been determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures. The FAA has prepared an economic assessment of the final rule. The FAA has evaluated the anticipated costs and benefits, which are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Discussion of Comments

In response to Notice No. 95–11, there were many comments relating to pilot, flight instructor or ground instructor, and pilot school certification requirements. The FAA's response to the technical issues raised by commenters are addressed in the preamble to the rule. The comments on the economic impact of the notice and FAA's response are discussed as follows:

Part-time or ''Free Lance Instructors''. One commenter (No. 30) states that the renewal requirements in the proposed rule will place unwarranted economic burdens upon new flight instructors, those flight instructors who instruct part time, and those ''free lance'' instructors unaffiliated with a fixed base operator (FBO). The commenter also does not believe that the FAA provided any supporting data explaining what safety benefit will result from the proposed conversion/renewal requirements.

FAA Response: The FAA believes that any proposal written would inherently favor some groups over other groups; however, this proposal attempts to minimize any bias. But the bias that the commenter is talking about already exists. (This commenter states that part-time or ''free lance'' instructors are currently a threat and potential source of lost revenue to FBOs. Consequently these instructors have found it difficult to conduct any instruction of any kind in a multiengine airplane unless the instructor or the student provides one.) This specific issue is also outside the scope of the final rule.

With regard to the renewal requirements, the FAA is stating what has been past policy as identified in FAA Order 8700.1. Moreover, the proposed rule (and this final rule) is somewhat less restrictive than the existing rule. The existing rule states that the flight instructor certificate is valid for 2 years from the expiration date. Under the final rule, if the renewal

date is for example, December 31, 1995, then the flight instructor can renew his or her certificate 90 days prior to the expiration date. The expiration date will be based on the December 31, 1995, date in certain cases.

Redundancy of Separate Instrument Ratings for Single Engine and Multiengine Airplanes. One commenter (No. 82) states that separate instrument ratings for single-engine and multiengine airplanes seems to be redundant.

Another commenter (No. 3,800) states that the proposed change adds significantly to the total cost of acquiring a commercial pilot certificate with single-engine and multiengine class ratings. This commenter states that the added costs to him would be about $5,500.

FAA Response: The FAA is withdrawing this proposal. The FAA will continue to enforce current policy and will further clarify that policy in the final rule.

Separate Instrument Rating Certificate for Single-Engine and Multiengine Airplane Instructors. A commenter (No. 639) argues that the FAA is imposing an undue and unnecessary financial burden upon an already depressed industry (by requiring instructors to obtain a special instrument instructor certificate specifically for multiengine aircraft). Other commenters (e.g., No. 4,765) provided similar comments. The commenter argues that the proposed rule will do nothing to improve the quality of multiengine training and will have no impact on safety. Other commenters (e.g., Nos. 933; 1,466; 1,624; 1,661; 3,133) also state that to require a separate checkride for a certified flight instructor, instrument and multiengine (CFII MEI) would add time and cost for the instructor with no significant increase in knowledge or safety. This commenter states that instrument work does not change with the addition of an engine, and CFIs who provide multiengine training must hold a commercial multiengine license with instrument privileges.

FAA Response: The FAA agrees with these commenters and has withdrawn this proposal.

Ratings for Flight Instructors. A commenter (No. 1,661) is opposed to the requirement that existing flight instructors who hold instrument airplane and multiengine ratings on their flight instructor certificates must have given 20 hours of flight training in a multiengine airplane for the issuance of an instrument multiengine airplane rating. In addition, the instructor must have recommended at least one student for the instrument airplane practical test who passes, or the flight instructor must pass a practical test to have his/her flight instructor certificate converted under the proposed changes. The commenter argues that this does not increase public safety but places a huge financial burden on instructors. This commenter states that the cost of an additional multiengine instrument instructor practical test would easily approach $500 per instructor, which includes the rental of a light twin-engine airplane at $150 per hour combined with an average fee of $150 to $200 per designated pilot examiner.

This commenter also states that flight instructors as a whole are highly skilled. The commenter cites a report stating that for 1994, while flight instruction accounted for over 23 percent of flying activity, it accounted for only 4.5 percent of fatal accidents. He concludes that flight instruction is one of the safest of all aviation activities and therefore flight instructors do not need additional testing.

FAA Response: The FAA agrees with the commenters and is withdrawing this proposal.

Passing the Instrument Proficiency Test of § 61.57 in an Airship. A commenter (No. 1,772) states that it is costly and time consuming to take a full-blown proficiency check in an airship. Each instrument approach takes 7 to 10 times the amount of time an airplane or helicopter would take to execute each maneuver, based on the slow groundspeed of the airship. With any wind component, additional time on the ''upwind'' portion of the approach might bring air traffic control (ATC) useable airspace to a standstill during such operations. At a minimum of $500 per hour, the operating costs involved during a proficiency check would take in excess of 5 hours and cost over $2,500. He also argues that the philosophy extends to instrument ''currency'' requirements. Ten to twelve instrument approaches in 2 hours flight time is virtually impossible to complete in a fast-moving airplane, much less in a vehicle moving at less than 30 knots and more, acutely affected by winds.

FAA Response: The existing rule (§ 61.57(e)(i)) covering instrument experience states that the pilot must have logged at least 6 hours of instrument time under actual or simulated IFR conditions, at least three of which were in flight in the category of aircraft involved, including at least six instrument approaches. In other words, the pilot currently must have 6 hours of instrument experience. Under the current rule, the commenter is required to take a proficiency check, therefore this comment is unfounded. The FAA acknowledges, however, that the language contained in the preamble to the proposed rule was unclear. The FAA has corrected the preamble in the rule.

Sharing of Expenses. Commenters (Nos. 3,320; 4,237; and 5,062) believe that the FAA should clarify and relax the interpretation of ''sharing expenses.'' One commenter (No. 3,320) believes that pilots should be permitted to share equally the costs of aircraft rental (or equivalent costs if the aircraft is owned by the pilot), and not simply fuel and oil costs. This commenter states that his hourly cost (based on total direct cost—insurance, maintenance, fuel) runs about $65 per hour, excluding depreciation for his Cessna 172. Fuel and oil costs are about $25 per hour. The cost to rent a similar aircraft in his area is about $70. This commenter states that strict pro rata sharing of only fuel and oil costs discourages pilots from using their aircraft and maintaining piloting skills. Sharing only fuel and oil costs with one passenger means that the pilot assumes 80 percent or more of the true cost of ''sharing expenses.'' Finally, the commenter states that the FAA should encourage pilots to use their skills, rather than financially penalizing them for taking passengers who wish to travel to a common destination. Other commenters (e.g., No. 4,792) are also opposed to the revision regarding shared expenses.

Another commenter (No. 3,407) believes that the revised text ''share equally'' will remove confusion from most private pilots. However, the proposed text does not specifically address rental of an aircraft by a pilot for a flight with passengers, all of whom share a common purpose for taking the flight. The commenter presents an example showing that the pilot would pay a greater share of expenses than each of the passengers. He estimates that a Cessna 172 rents for $50 per hour. The airplane consumes 8 gallons of fuel per hour at $2 per gallon and one-half pint of oil at $3 per quart. The commenter concluded that the proposed rule would reduce revenue at a number of FBOs that depend on aircraft rental revenue and will reduce pilot flight hours since many pilots will not take flights that would otherwise be affordable.

FAA Response: The FAA has rewritten the final rule to allow for the sharing of all expenses specified in § 61.113(c).

Glider Class Ratings and Testing. A commenter (No. 3,707) opposes the FAA dividing the glider category into two classes for pilot certificates and ratings: powered glider and nonpowered glider.

He contends that converting current glider pilot and flight instructor certificates to the new class ratings over a 2-year period does not keep with the stated goal of promoting aviation and reducing the regulatory burden. He states that there are no more than 200 aircraft that could be classified under the proposed ''powered glider'' class. He also states that 15,000 licensed glider pilots would have to be retested at $300 per pilot or $4.5 million total. He's not even sure that there are enough certified flight instructors, ground (CFI–G's) to do this in 2 years.

SSA (No. 5,220) does not believe that the FAA should establish a class rating for powered gliders. The commenter believes that the proposed rule goes beyond the scope of lessening the burden of regulatory reform to establish a class rating for a minimal size group that has not shown a propensity to denigrate safety. The commenter cites statistics from the Soaring Safety Foundation showing that during the period of 1981 through 1995, powered sailplanes were involved in nine accidents which resulted in four fatalities. The commenter also states that there are currently about 200 licensed powered sailplanes, and by 2002 there will be about 214. There are also about 300 active members in the American Soaring Society ''checked out'' in powered sailplanes. This number is expected to increase to 321 pilots by the end of 2002. However, there are currently about 1,000 pilots ''checked out'' in powered sailplanes.

Another commenter (No. 5,411) states that glider class ratings are unnecessary. The commenter notes that a pilot who took his or her test in a traditional glider, and who owns and flies a powered glider would, under this proposal, have to hire an instructor, receive training in an aircraft the pilot is already flying, get an endorsement from the instructor, and take another test in his or her powered glider. This commenter states that there are few powered glider instructors and that they are costly.

FAA Response: The FAA will not create separate class ratings for powered and nonpowered gliders. There is insufficient safety justification to support this change for separate class ratings.

CFI for Lighter-than-air Aircraft. A commenter (No. 4,283) opposes the FAA creating a CFI rating for lighter-than-air aircraft for several reasons. The commenter states that in the state of Michigan during the past 15 years, there have been only three balloon accidents and they were minor in nature with no fatalities. The balloon community will be reduced in size should the FAA require a CFI rating for balloons. The entry costs of flying balloons is about $35,000 for new equipment. Adding the training costs to this would make ballooning too expensive for most people. In addition, for every lesson completed, there are usually two or three scheduled sessions that are ''weathered out.'' Another commenter (No. 4,437), an employee of a hot air balloon manufacturer, says that the proposed rule would result in fewer balloon sales. The commenter believes that as many as 40 employees at their facility would lose their jobs. Other commenters (Nos. 4,642 and 4,903) believe that any increase in costs would limit the growth in ballooning and that it would be impossible to maintain an instructor certificate under the proposed rule because the costs of maintaining a certificate would increase, and often a good flight instructor may only be able to train one student per year and in some cases no students in a given year.

Another commenter (No. 2,807) states that the creation of a lighter-than-air flight instructor rating will make obtaining a gas balloon certificate so expensive that all but the very rich will be eliminated from obtaining a certificate. The current cost of helium for one flight is approximately $3,600 delivered to the site. With a two flight minimum as proposed within 60 days, the nominal cost of the certificate will approach $10,000.

FAA Response: The FAA agrees with these commenters and is withdrawing this proposal. The FAA is not establishing a flight instructor certificate in the lighter-than-air category because operational requirements and accident/incident data do not establish a sufficient safety justification for the increased regulatory and economic burden.

Small Business Impact. A commenter (No. 4,307) questions the FAA conclusion that there would not be a significant economic impact on a substantial number of small entities in the helicopter industry (training). This commenter asks how many of those entities may have the desire or the financial ability to equip and maintain their aircraft to meet these new rules, and if they could, would then be willing to place these aircraft in the areas of risk that are proposed in the new rules. The commenter also states that proposed § 61.129(5)(i) requires 5 hours of instrument training in a helicopter. The added cost would be $1,150 per instructor. The commenter further states that it would force the small operator to purchase ready-equipped aircraft or spend a minimum of about $15,000 per aircraft to bring it up to IFR training capability. In addition, small operators do not have helicopter CFIIs on staff, so either these schools would have to train these otherwise qualified instructors, or replace them with other individuals. If a helicopter instructor is not instrument-rated in another category, the cost for the instrument rating would be over $10,500 per instructor.

FAA Response: The FAA agrees with this commenter. The final rule does not require that the equipment be class specific. An applicant can take the instrument training in any kind of aircraft, flight simulator, or other ground training device.

Cost of Medical. A commenter (No. 144) who flies for pleasure argues that he flies high performance gliders and self evaluates himself because of the cost of obtaining a third-class medical to fly powered aircraft. The commenter states that he had an angioplasty in 1988 and states that the required tests for a third-class medical after his angioplasty cost about $1,800–$2,000 more. He believes that it is as ''safe for powered pilots, flying for pleasure, out of the terminal area, VFR day light, with one passenger, maximum four place 180 H.P. as it is for me to fly high performance gliders, with one passenger for pleasure, and have the same self-certifying ability.''

A second commenter (No. 2,857) states that he has chosen to fly under part 103 in an ultralight to avoid paying the $1,000 per year medical testing.

FAA Response: The FAA carefully considered these cost comments as well as other comments pertaining to the proposal that pilots who hold recreational pilot privileges, student pilots operating within the limitations of a recreational pilot certificate, and those higher-rated pilots who elect to exercise only recreational pilot privileges be permitted to operate aircraft without holding a medical certificate. The FAA's overriding concern is safety, and before such a significant change can be adopted, the FAA must determine that the level of safety will not be degraded. The FAA has decided, therefore, to withdraw the proposed change from the final rule. The FAA intends to conduct additional analysis on this proposal and may issue a separate rulemaking action in the future.

Elimination of ''Simulated Tow'' Option. A commenter (No. 2,295) argues that the elimination of the ''simulated tow'' option found in proposed § 61.69(c)(2) will place a serious operational and financial hardship on many glider operations. The majority of aircraft used for glider towing are single-

place and many two-place aircraft are not well suited for this service. The commenter estimates that over 70 percent of the glider towing in the United States is done with single-place aircraft. The club that the commenter belongs to checks out four to five new tow pilots each year and the closest two-place tow plane is several hundred miles away from their operation. He estimates that the additional cost for the elimination of the ''simulated tow'' option will be $500 per tow pilot.

SSA (No. 5,220) also does not agree with the FAA's belief that safety would be better served by eliminating the second method of tow endorsement in current § 61.69. The commenter states that there are numerous clubs and commercial operators that tow with single-place tow planes and eliminating the second part of § 61.69 would create a severe limitation on those operators. It would require having an aircraft with two pilot seats and a tow hitch available to complete the checkout, or hiring a multiplace tow plane with a tow hitch to do the checkouts.

FAA Response: After the comment period closed, the FAA specifically discussed this issue with SSA in order to gather additional clarifying information. There are about 350 soaring sites in the United States and about 4 tow planes per site. Of the 1,500 tow planes, about 1,000 are single-seat and 500 are two-seat airplanes. Most operators do not use the simulated towing option. For those operators that do, the cost of an approved tow kit is about $600 for parts and another $600 for labor. Some operators may not want to install tow kits on their airplanes because it chops their airplane up. Consequently, some tow pilots may have to travel to other soaring sites to be checked out in a two-place tow plane with a hitch.[1]

After the comment period closed, the FAA also contacted the Memphis Soaring Society (No. 2,295) to clarify their comment.[2] The commenter claims that the most common single place tow aircraft are 235 horsepower Piper PA–25s. This aircraft, originally built for agricultural operations, became available for glider towing when agricultural operators moved up to higher-powered turbine aircraft. Some two-place tow planes are the Piper Super Cub, the Citabria, the Maule, and a model of the Bellanca (all taildraggers). This operator states that they own one Piper PA 25. The nearest two-seat airplane is a Maule, which is 200 miles away. The estimated added cost is $200 for the Maule, and $300 for transportation, overnight accommodations, and meals.

After carefully reviewing this information, the FAA concludes that some operators may incur added costs associated with eliminating this option. Given the lack of safety benefits, the FAA is withdrawing the proposal to eliminate the simulated tow option.

Extensive Use of Ground Trainers and 250-Hour Experience Requirement for Part 141 Schools. A commenter (No. 2,388) uses ground trainers extensively. They have found that they can provide more quality training in this equipment given the cost than they can in aircraft. Their present part 141-approved instrument course has 30.9 hours in airplanes and 28.7 hours in ground trainers. This commenter states that their trainers would meet the requirements of proposed § 141.41(a)(1), but would only be valid for 10 percent of the course. Consequently, their cost per student would increase by $1,000 and training quality would be greatly reduced. Their present course is 58 hours total time, of which 28 hours are in a ground trainer. Ten percent of 58 is only about 6 hours, or 22 hours less than present. The commenter contends that the only way to survive would be to reduce their course time to 35 hours with 3.5 hours in a ground trainer.

Another commenter addressed the 250-hour experience requirement for part 141 FAA approved schools. This commenter (No. 2,554) states that economically the only incentive to retain part 141 status would be the 5-hour reduction in flight time required for the private pilot and instrument rating courses. The small difference in flight hours would not offset the internal cost of completing flight instructor ground training requirements and conducting flight competency check rides.

A third commenter (No. 4,938) argues that proposed part 141 Appendix D—Commercial Pilot Certification Course would now require pilot flight time to increase from 190 hours to 250 hours. At his pilot school, this would increase the cost of the commercial certificate for their students by $3,360 to $4,260 depending on the mix of dual or solo flight time. The only advantage of training under part 141 would be examining authority by the pilot school and not having to pay a designated examiner's fee.

FAA Response: The final rule has been changed to reflect the comments of these individuals. The FAA will allow the use of flight training devices to bring students up to current requirements. Students will be issued a certificate after completing the requirements for a part 141 course. There will be no additional time requirement.

Economic Impact on the Industry. A commenter (No. 3,818) states that the economic impact of this proposed rule has not been addressed and that the cost of training will increase without any clear indication that there will be any benefits.

FAA Response: A summary of the regulatory evaluation to the proposed rule along with the proposed rule and a copy of the regulatory evaluation is available in the public docket. In the past decade (as discussed in the regulatory evaluation) general aviation accidents, both overall accidents and fatal accidents have decreased in number as well as in rate per 100,000 aircraft hours. However, the percentage of total accidents where pilot error is cited as a causal factor has increased. The analysis for Notice No. 95–11 concludes that although other areas of accident causes have been addressed, pilot error has yet to be effectively controlled.

The FAA focused on pilot-error related accidents due to the focus of this rulemaking on pilot training. All accidents where pilot error was cited as a cause or a factor are counted in the above stated percentage of pilot error accidents. For example, accidents occurring due to weather or equipment failure may also be included in the count of pilot error accidents. An accident that occurs due to depletion of fuel that is a result of pilot error is cited as a causal factor. That way, the FAA defines the number of accidents to be considered by eliminating accidents that are solely caused by weather, systems, equipment, instruments, or some other factor not addressed by the proposed rule.

Biennial Flight Review Class Specific. A commenter (No. 4,557) was under the impression that the proposed rule would have required BFRs to be class specific. This commenter provided substantial cost data to the FAA on his costs should the FAA make BFRs class specific.

FAA Response: The FAA did not propose, nor does the final rule require, that BFRs be class specific.

Additional Training Required for Operating High Performance Airplanes. AOPA (No. 5412) discusses the additional training required for operating high performance airplanes.

[1] Based on a record of conversation between Gary Becker, USDT, FAA, APO–310 and James Short, Chairman, SSA Government Liaison Board. April 16 and 17, 1996.

[2] Based on a record of conversation between Duke Shepard, USDT, FAA, APO–310 and Nathan Lemmon, President, Memphis Soaring Society. March 27, 1996.

The current regulation defines high performance as having an engine output of more than 200 horsepower. The proposed rule changed this definition to include aircraft of 200 horsepower or more. AOPA believes that this change will impact thousands of pilots and additional aircraft.

According to AOPA, a significant number of aircraft have been type certified at 200 horsepower and currently are not included in the high performance endorsement requirement. By lowering the requirement only one horsepower, FAA would be placing new training requirements on a large portion of the pilot community with no justification presented for the change. AOPA urges the FAA to maintain the current definition of high performance at more than 200 horsepower.

FAA Response: The FAA has reviewed the information provided by this and other commenters. The FAA has decided to require separate endorsements for complex and high performance aircraft. However, the FAA will not go forward with the proposal to include airplanes with 200 horsepower as high performance airplanes.

Costs and Benefits

The FAA estimates, based on an analysis by Gellman Research Associates, Inc.[3] (GRA), information submitted to the public docket, that the present value cost of this final rule discounted 7 percent over 10 years is $310,000. The only provision adding significant costs is final § 61.101.

Section 61.65, which modifies the flight time requirement for an instrument rating provides the greatest cost savings at $14.6 million annually ($102.54 million discounted or 38.6 percent of $265 million).

The FAA has determined that the final rule is cost-beneficial.

International Trade Impact Analysis

The Office of Management and Budget (OMB) requires Federal agencies to determine whether any rule or regulation will have an impact on international trade. The revisions discussed in this report primarily affect the domestic operations of individual pilots, flight instructors, and ground instructors, not of business entities. In the case of pilot schools or aircraft operators, it is not likely that the services produced by these entities would involve international trade flows of aviation products or services and thus do not impact trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the United States. Thus, the changes will have no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Act) (Public Law 96–354; September 19, 1980) was passed by Congress to ensure that small entities are not overly burdened by government regulations relative to large entities. Because laws and regulations designed for large entities have been applied uniformly to small businesses without regard to scale or resources, Federal rules may impose ''unnecessarily and disproportionately burdensome demands'' upon small entities.

As a result, this Act required all Federal agencies, including the FAA to determine whether any proposed regulation would have ''a significant economic impact on a substantial number of small entities.'' The existence of such an impact might lead to alternative regulatory approaches that would recognize differences between the ability of small and large entities to fulfill regulatory requirements.

All of the major changes to the rules affect pilots, flight instructors, and ground instructors, who are individuals rather than business entities or government entities. The revisions that impact pilot schools do not exceed the cost-threshold level, as found in FAA Order 2100.14A, ''Regulatory Flexibility Criteria and Guidance'' (September 1986). In fact, as this report shows, the final rule would result in net annual cost savings of about $3,000 for all pilot schools. The FAA has determined that the revisions will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulation 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 rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information for § 61.3 is 2120–0034. The valid OMB control number assigned to the collection of information for §§ 61.13 through 61.197 is 2120–0021. The valid OMB control number assigned to the collection of information for part 141 is 2120–0009.

Unfunded Mandates Reform Act Assessment

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

This proposed rule does not meet the cost thresholds described above. Furthermore, this proposed rule would not impose a significant cost on small governments and would not uniquely affect those small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

[3] The basis for this analysis is Work Order No. 27 of Contract DTFA01–88–C–00059 by Gellman Research Associates, Inc. (GRA), titled: ''Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment Notice of Proposed Rulemaking to Revise 14 CFR Part 61, 14 CFR Part 141, and 14 CFR Part 143.'' Jenkinton, Pennsylvania. December 23, 1992.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is a ''significant regulatory action'' under Executive Order 12866. In addition, the FAA certifies that this rule 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. This rule is considered significant under DOT Order 2100.5, ''Policies and Procedures for Simplification, Analysis, and Review of Regulations.'' A regulatory evaluation of the rule, including the Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 61

Air safety, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Compensation, Education, Foreign persons, Helicopters, Pilots, Rotorcraft, Safety, Students, Teachers, Transportation.

14 CFR Part 141

Air safety, Air transportation, Aircraft pilots, Airmen, Airplanes, Aviation safety, Balloons, Education, Educational facilities, Helicopters, Pilots, Rotorcraft, Safety, Schools, Students, Teachers, Transportation.

14 CFR Part 143

Air safety, Air transportation, Airmen, Airplanes, Aviation safety, Education, Educational Facilities, Safety, Students, Teachers, Transportation.

The Amendments

In consideration of the foregoing and under the authority of 49 U.S.C. 44702, the FAA amends parts 1, 61, 141, and 143 of the Federal Aviation Regulations (14 CFR parts 1, 61, 141, and 143) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Section 1.1 is amended by revising the definitions of balloon, flight time, and pilot in command, and adding the definition of powered-lift to read as follows:

§ 1.1 General definitions.

* * * * *

Balloon means a lighter-than-air aircraft that is not engine driven, and that sustains flight through the use of either gas buoyancy or an airborne heater.

* * * * *

Flight time means:

(1) Pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing; or

(2) For a glider without self-launch capability, pilot time that commences when the glider is towed for the purpose of flight and ends when the glider comes to rest after landing.

* * * * *

Pilot in command means the person who:

(1) Has final authority and responsibility for the operation and safety of the flight;

(2) Has been designated as pilot in command before or during the flight; and

(3) Holds the appropriate category, class, and type rating, if appropriate, for the conduct of the flight.

* * * * *

Powered-lift means a heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight.

* * * * *

3. Part 61 is revised to read as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

SPECIAL FEDERAL AVIATION REGULATIONS

SFAR 58 [NOTE]

SFAR 73

Subpart A—General

Sec.

Subpart B—Aircraft Ratings and Pilot Authorizations

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SPECIAL FEDERAL AVIATION REGULATIONS

SFAR No. 58

Editorial Note: For the text of SFAR No. 58, see part 121 of this chapter.

SFAR NO. 73—ROBINSON R–22/R–44 SPECIAL TRAINING AND EXPERIENCE REQUIREMENTS

Sections

1. Applicability. Under the procedures prescribed herein, this SFAR applies to all persons who seek to manipulate the controls or act as pilot in command of a Robinson model R–22 or R–44 helicopter. The requirements stated in this SFAR are in addition to the current requirements of part 61.

2. Required training, aeronautical experience, endorsements, and flight review.

(a) Awareness Training:

(1) Except as provided in paragraph (a)(2) of this section, no person may manipulate the controls of a Robinson model R–22 or R–44 helicopter after March 27, 1995, for the purpose of flight unless the awareness training specified in paragraph (a)(3) of this section is completed and the person's logbook has been endorsed by a certified flight instructor authorized under paragraph (b)(5) of this section.

(2) A person who holds a rotorcraft category and helicopter class rating on that person's pilot certificate and meets the experience requirements of paragraph (b)(1) or paragraph (b)(2) of this section may not manipulate the controls of a Robinson model R–22 or R–44 helicopter for the purpose of flight after April 26, 1995, unless the awareness training specified in paragraph (a)(3) of this section is completed and the person's logbook has been endorsed by a certified flight instructor authorized under paragraph (b)(5) of this section.

(3) Awareness training must be conducted by a certified flight instructor who has been endorsed under paragraph (b)(5) of this section and consists of instruction in the following general subject areas:

(i) Energy management;

(ii) Mast bumping;

(iii) Low rotor RPM (blade stall);

(iv) Low G hazards; and

(v) Rotor RPM decay.

(4) A person who can show satisfactory completion of the manufacturer's safety course after January 1, 1994, may obtain an endorsement from an FAA aviation safety inspector in lieu of completing the awareness training required in paragraphs (a)(1) and (a)(2) of this section.

(b) Aeronautical Experience:

(1) No person may act as pilot in command of a Robinson model R–22 unless that person:

(i) Has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22; or

(ii) Has had at least 10 hours dual instruction in the Robinson R–22 and has received an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that the individual has been given the training required by this paragraph and is proficient to act as pilot in command of an R–22. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in an R–22 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(A) Enhanced training in autorotation procedures,

(B) Engine rotor RPM control without the use of the governor,

(C) Low rotor RPM recognition and recovery, and

(D) Effects of low G maneuvers and proper recovery procedures.

(2) No person may act as pilot in command of a Robinson model R–44 unless that person:

(i) Has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–44; or

(ii) Has had at least 10 hours dual instruction in the Robinson R–44, and has received an endorsement from a certified flight instructor authorized under paragraph

(b)(5) of this section that the individual has been given the training required by this paragraph and is proficient to act as pilot in command of an R–44. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in an R–44 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(A) Enhanced training in autorotation procedures,

(B) Engine rotor RPM control without the use of the governor,

(C) Low rotor RPM recognition and recovery, and

(D) Effects of low G maneuvers and proper recovery procedures.

(3) A person who does not hold a rotorcraft category and helicopter class rating must have had at least 20 hours of dual instruction in a Robinson R–22 helicopter prior to operating it in solo flight. In addition, the person must obtain an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that instruction has been given in those maneuvers and procedures, and the instructor has found the applicant proficient to solo a Robinson R–22. This endorsement is valid for a period of 90 days. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(i) Enhanced training in autorotation procedures,

(ii) Engine rotor RPM control without the use of the governor,

(iii) Low rotor RPM recognition and recovery, and

(iv) Effects of low G maneuvers and proper recovery procedures.

(4) A person who does not hold a rotorcraft category and helicopter class rating must have had at least 20 hours of dual instruction in a Robinson R–44 helicopter prior to operating it in solo flight. In addition, the person must obtain an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that instruction has been given in those maneuvers and procedures, and the instructor has found the applicant proficient to solo a Robinson R–44. This endorsement is valid for a period of 90 days. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(i) Enhanced training in autorotation procedures,

(ii) Engine rotor RPM control without the use of the governor,

(iii) Low rotor RPM recognition and recovery, and

(iv) Effects of low G maneuvers and proper recovery procedures.

(5) No certified flight instructor may provide instruction or conduct a flight review in a Robinson model R–22 or R–44 unless that instructor:

(i) Completes the awareness training in paragraph (2)(a) of this SFAR;

(ii) Meets the experience requirements of paragraph 2(b)(1)(i) of this SFAR for the R–22, or paragraph 2(b)(2)(i) of this SFAR for the R–44;

(iii) Has completed flight training in an R–22, R–44, or both, on the following abnormal and emergency procedures:

(A) Enhanced training in autorotation procedures,

(B) Engine rotor RPM control without the use of the governor,

(C) Low rotor RPM recognition and recovery, and

(D) Effects of low G maneuvers and proper recovery procedures.

(iv) Been authorized by endorsement from an FAA aviation safety inspector or authorized designated examiner that the instructor has completed the appropriate training, meets the experience requirements, and has satisfactorily demonstrated an ability to provide instruction on the general subject areas of paragraph 2(a)(3) of this SFAR, and the flight training identified in paragraph 2(b)(5)(iii) of this SFAR.

(c) Flight Review:

(1) No flight review completed to satisfy § 61.56 by an individual after becoming eligible to function as pilot in command in a Robinson R–22 helicopter shall be valid for the operation of R–22 helicopter unless that flight review was taken in an R–22.

(2) No flight review completed to satisfy § 61.56 by individual after becoming eligible to function as pilot in command in a Robinson R–44 helicopter shall be valid for the operation of R–44 helicopter unless that flight review was taken in the R–44.

(3) The flight review will include a review of the awareness training subject areas of paragraph 2(a)(3) of this SFAR and the flight training identified in paragraph 2(b) of this SFAR.

(d) Currency Requirements: No person may act as pilot in command of a Robinson model R–22 or R–44 helicopter carrying passengers unless the pilot in command has met the recency of flight experience requirements of § 61.57 in an R–22 or R–44, as appropriate.

3. Expiration date. This SFAR expires December 31, 1997, unless sooner superseded or rescinded.

Subpart A—General

§ 61.1 Applicability and definitions.

(a) This part prescribes:

(1) The requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings; the conditions under which those certificates and ratings are necessary; and the privileges and limitations of those certificates and ratings.

(2) The requirements for issuing pilot, flight instructor, and ground instructor authorizations; the conditions under which those authorizations are necessary; and the privileges and limitations of those authorizations.

(3) The requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings for persons who have taken courses approved by the Administrator under other parts of this chapter.

(b) For the purpose of this part:

(1) *Aeronautical experience* means pilot time obtained in an aircraft, approved flight simulator, or approved flight training device for meeting the appropriate training and flight time requirements for an airman certificate, rating, flight review, or recency of flight experience requirements of this part.

(2) *Authorized instructor* means—

(i) A person who holds a valid ground instructor certificate issued under part 61 or part 143 of this chapter when conducting ground training in accordance with the privileges and limitations of his or her ground instructor certificate;

(ii) A person who holds a current flight instructor certificate issued under part 61 of this chapter when conducting ground training or flight training in accordance with the privileges and limitations of his or her flight instructor certificate; or

(iii) A person authorized by the Administrator to provide ground training or flight training under SFAR No. 58, or part 61, 121, 135, or 142 of this chapter when conducting ground training or flight training in accordance with that authority.

(3) *Cross-country time* means that time obtained in flight in an aircraft and, except as provided in paragraph (b)(3)(iv) of this section, each flight must include a landing at a point other than the point of departure, and—

(i) The person must—

(A) Hold a pilot certificate issued under this part; and

(B) Use dead reckoning, pilotage, electronic navigation aids, radio aids, or other navigation systems to navigate to the landing point.

(ii) For the purpose of meeting the cross-country time eligibility requirements for a private pilot certificate (except with a rotorcraft rating), commercial pilot certificate, or an instrument rating, any point of landing must be at least a straight-line distance of more than 50 nautical miles from the original point of departure.

(iii) For the purpose of meeting the cross-country time eligibility requirements for a private pilot certificate with a rotorcraft rating, any point of landing must be at least a straight-line distance of more than 25 nautical miles from the original point of departure.

(iv) For a commercial pilot, airline transport pilot, or a military pilot who is qualified for a commercial pilot certificate under § 61.73 of this part,

cross-country time includes a flight that is at least a straight-line distance of more than 50 nautical miles from the original point of departure and uses dead reckoning, pilotage, electronic navigation aids, radio aids, or other navigation systems.

(4) *Examiner* means any person who is authorized by the Administrator to conduct a pilot proficiency test or a practical test for an airman certificate or rating issued under this part, or a person who is authorized to conduct a knowledge test under this part.

(5) *Flight simulator* means a device that—

(i) Is a full-size aircraft cockpit replica of a specific type of aircraft, or make, model, and series of aircraft;

(ii) Includes the hardware and software necessary to represent the aircraft in ground operations and flight operations;

(iii) Uses a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(iv) Uses a visual system that provides at least a 45 degree horizontal field of view and a 30 degree vertical field of view simultaneously for each pilot; and

(v) Has been evaluated, qualified, and approved by the Administrator.

(6) *Flight training* means that training, other than ground training, received from an authorized instructor in flight in an aircraft.

(7) *Flight training device* means a device that—

(i) Is a full-size replica of the instruments, equipment, panels, and controls of an aircraft, or set of aircraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for the systems installed, that is necessary to simulate the aircraft in ground and flight operations;

(ii) Need not have a force (motion) cueing or visual system; and

(iii) Has been evaluated, qualified, and approved by the Administrator.

(8) *Ground training* means that training, other than flight training, received from an authorized instructor.

(9) *Instrument approach* means an approach procedure defined in part 97 of this chapter.

(10) *Instrument training* means that time in which instrument training is received from an authorized instructor under actual or simulated instrument conditions.

(11) *Knowledge test* means a test on the aeronautical knowledge areas required for an airman certificate or rating that can be administered in written form or by a computer.

(12) *Pilot time* means that time in which a person—

(i) Serves as a required pilot;

(ii) Receives training from an authorized instructor in an aircraft, approved flight simulator, or approved flight training device; or

(iii) Gives training as an authorized instructor in an aircraft, approved flight simulator, or approved flight training device.

(13) *Practical test* means a test on the areas of operations for an airman certificate, rating, or authorization that is conducted by having the applicant respond to questions and demonstrate maneuvers in flight, in an approved flight simulator, or in an approved flight training device.

(14) *Set of aircraft* means aircraft that share similar performance characteristics, such as similar airspeed and altitude operating envelopes, similar handling characteristics, and the same number and type of propulsion systems.

(15) *Training time* means training received—

(i) In flight from an authorized instructor;

(ii) On the ground from an authorized instructor; or

(iii) In an approved flight simulator or approved flight training device from an authorized instructor.

§ 61.2 Certification of foreign pilots, flight instructors, and ground instructors.

(a) Except as provided for in paragraph (b) of this section, an airman certificate may not be issued to a person who is not a citizen of the United States or a resident alien of the United States unless that person passes the appropriate knowledge or practical test within the United States.

(b) A person who is not a citizen of the United States or a resident alien of the United States may be issued an airman certificate, and the knowledge test and practical test for that certificate may be administered outside the United States when:

(1) The Administrator determines the person needs a pilot certificate to operate as a required pilot crewmember of a civil aircraft of U.S. registry;

(2) The Administrator determines the person needs a flight instructor certificate or ground instructor certificate to train persons who are citizens of the United States;

(3) The certificate is for an addition of a category, class, instrument, or type rating onto an existing U.S. pilot certificate, provided the certificate is not one that was issued on the basis of a foreign pilot license;

(4) The certificate is for an addition, renewal, or reinstatement of a category, class, or instrument rating onto an existing U.S. flight instructor certificate; or

(5) The certificate is for an addition of a rating onto an existing U.S. ground instructor certificate.

(c) Training centers and their satellite training centers certificated under part 142 of this chapter, may, outside the United States—

(1) Prepare and recommend applicants for additional ratings of and endorsements to certificates issued under this part, and issue additional ratings and provide endorsements within the authority granted to that training center by the Administrator; and

(2) Prepare and recommend U.S. citizen applicants for airman certificates, and issue certificates to U.S. citizens within the authority granted to that training center by the Administrator.

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* A person may not act as pilot in command or in any other capacity as a required pilot of a civil aircraft of U.S. registry, unless that person has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. However, when the aircraft is operated within a foreign country, a current pilot license issued by the country in which the aircraft is operated may be used.

(b) *Required pilot certificate for operating a foreign-registered aircraft.* A person may not act as pilot in command or in any other capacity as a required pilot of a civil aircraft of foreign registry within the United States, unless that person's pilot certificate:

(1) Is valid and in that person's physical possession, or readily accessible in the aircraft when exercising the privileges of that pilot certificate; and

(2) Has been issued under this part, or has been issued or validated by the country in which the aircraft is registered.

(c) *Medical certificate.* (1) Except as provided for in paragraph (c)(2) of this section, a person who is acting as pilot in command or in any other capacity as a required crewmember under any part of this chapter must have a current and appropriate medical certificate, or other documentation acceptable to the Administrator, that has been issued under part 67 of this chapter and is in the person's physical possession or readily accessible in the aircraft.

(2) A person is not required to meet the requirements of paragraph (c)(1) of this section if that person—

(i) Is exercising the privileges of a student pilot certificate while seeking a pilot certificate with a glider category rating or balloon class rating;

(ii) Is holding a pilot certificate with a balloon class rating and is piloting or providing training in a balloon as appropriate;

(iii) Is holding a pilot certificate or a flight instructor certificate with a glider category rating, and is piloting or providing training in a glider, as appropriate;

(iv) Except as provided in paragraph (c)(2)(iii) of this section, is exercising the privileges of a flight instructor certificate, provided the person is not acting as pilot in command or as a required crewmember;

(v) Is exercising the privileges of a ground instructor certificate;

(vi) Is operating an aircraft within a foreign country using a pilot license issued by that country and possesses evidence of current medical qualification for that license; or

(vii) Is operating an aircraft with a U.S. pilot certificate, issued on the basis of a foreign pilot license, issued under § 61.75 of this part, and holds a current medical certificate issued by the foreign country that issued the foreign pilot license, which is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that airman certificate.

(d) *Flight instructor certificate.* (1) A person who holds a flight instructor certificate must have that certificate, or other documentation acceptable to the Administrator, in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that flight instructor certificate.

(2) Except as provided in paragraph (d)(3) of this section, no person other than the holder of a flight instructor certificate with the appropriate rating on that certificate may—

(i) Give training required to qualify a person for solo flight and solo cross-country flight;

(ii) Endorse an applicant for a pilot, flight instructor, or ground instructor certificate or rating issued under this part;

(iii) Endorse a pilot logbook to show training given; or

(iv) Endorse a student pilot certificate and logbook for solo operating privileges.

(3) A flight instructor certificate is not necessary if the training is given by—

(i) The holder of a commercial pilot certificate with a lighter-than-air rating, provided the training is given in accordance with the privileges of the certificate in a lighter-than-air aircraft;

(ii) The holder of an airline transport pilot certificate with a rating appropriate to the aircraft in which the training is given, provided the training is given in accordance with the privileges of the certificate and conducted in accordance with an approved air carrier training program approved under part 121 or 135 of this chapter;

(iii) A person who is qualified in accordance with subpart C of part 142 of this chapter, provided the training is conducted in accordance with an approved part 142 training program;

(iv) A flight instructor not certificated by the FAA in accordance with § 61.41 of this part; or

(v) The holder of a ground instructor certificate in accordance with the privileges of the certificate.

(e) *Instrument rating.* No person may act as pilot in command of a civil aircraft under IFR or in weather conditions less than the minimums prescribed for VFR flight unless that person holds:

(1) The appropriate aircraft category, class, type (if required), and instrument rating on that person's pilot certificate for any airplane, helicopter, or powered-lift being flown;

(2) An airline transport pilot certificate with the appropriate aircraft category, class, and type rating (if required) for the aircraft being flown;

(3) For a glider, a pilot certificate with a glider category rating and an airplane instrument rating; or

(4) For an airship, a commercial pilot certificate with a lighter-than-air category rating and airship class rating.

(f) *Category II pilot authorization.* Except for a pilot conducting Category II operations under part 121 or part 135, a person may not:

(1) Act as pilot in command of a civil aircraft during Category II operations unless that person—

(i) Holds a current Category II pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as pilot in command of that aircraft in Category II operations.

(2) Act as second in command of a civil aircraft during Category II operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category II operations.

(g) *Category III pilot authorization.* Except for a pilot conducting Category III operations under part 121 or part 135, a person may not:

(1) Act as pilot in command of a civil aircraft during Category III operations unless that person—

(i) Holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) Act as second in command of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category III operations.

(h) *Category A aircraft pilot authorization.* The Administrator may issue a certificate of authorization for a Category II or Category III operation to the pilot of a small aircraft that is a Category A aircraft, as identified in § 97.3(b)(1) of this chapter if:

(1) The Administrator determines that the Category II or Category III operation can be performed safely by that pilot under the terms of the certificate of authorization; and

(2) The Category II or Category III operation does not involve the carriage of persons or property for compensation or hire.

(i) *Ground instructor certificate.* (1) Each person who holds a ground instructor certificate must have that certificate in that person's physical possession or immediately accessible when exercising the privileges of that certificate.

(2) Except as provided in paragraph (d) of this section, no person other than the holder of a ground instructor certificate with the appropriate rating on that certificate or a person authorized by the Administrator may—

(i) Give ground training required to qualify a person for solo flight and solo cross-country flight;

(ii) Endorse an applicant for a knowledge test required for a pilot, flight instructor, or ground instructor certificate or rating issued under this part; or

(iii) Endorse a pilot logbook to show ground training given.

(j) *Age limitation for certain operations.*

(1) *Age limitation.* Except as provided in paragraph (j)(3) of this section, no person who holds a pilot certificate issued under this part shall serve as a pilot on a civil airplane of U.S. registry in the following operations if the person has reached his or her 60th birthday—

(i) Scheduled international air services carrying passengers in turbojet-powered airplanes;

(ii) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat;

(iii) Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passenger seats, excluding each crewmember seat; or

(iv) Scheduled international air services, or nonscheduled international air transportation for compensation or hire, in airplanes having a payload capacity of more than 7,500 pounds.

(2) *Definitions.* (i) ''International air service,'' as used in paragraph (j) of this section, means scheduled air service performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the airspace over the territory of more than one country.

(ii) ''International air transportation,'' as used in paragraph (j) of this section, means air transportation performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the airspace over the territory of more than one country.

(3) *Delayed pilot age limitation.* Until December 20, 1999, a person may serve as a pilot in operations covered by this paragraph after that person has reached his or her 60th birthday if, on March 20, 1997, that person was employed as a pilot in operations covered by this paragraph.

(k) *Special purpose pilot authorization.* Any person that is required to hold a special purpose pilot authorization, issued in accordance with § 61.77 of this part, must have that authorization and the person's foreign pilot license in that person's physical possession or have it readily accessible in the aircraft when exercising the privileges of that authorization.

(l) *Inspection of certificate.* Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it for inspection upon a request from:

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) Any Federal, State, or local law enforcement officer.

§ 61.4 Approval of flight simulators and flight training devices.

(a) Except as specified in paragraph (b) or (c) of this section, each flight simulator and flight training device used for training, and for which an airman is to receive credit to satisfy any training, testing, or checking requirement under this chapter, must be approved by the Administrator for—

(1) The training, testing, and checking for which it is used;

(2) Each particular maneuver, procedure, or crewmember function performed; and

(3) The representation of the specific category and class of aircraft, type of aircraft, particular variation within the type of aircraft, or set of aircraft for certain flight training devices.

(b) Any device used for flight training, testing, or checking that has been determined to be acceptable to or approved by the Administrator prior to August 1, 1996, which can be shown to function as originally designed, is considered to be a flight training device, provided it is used for the same purposes for which it was originally accepted or approved and only to the extent of such acceptance or approval.

(c) The Administrator may approve a device other than a flight training simulator or flight training device for specific purposes.

§ 61.5 Certificates and ratings issued under this part.

(a) The following certificates are issued under this part to an applicant who satisfactorily accomplishes the training and certification requirements for the certificate sought:

(1) Pilot certificates—

(i) Student pilot.

(ii) Recreational pilot.

(iii) Private pilot.

(iv) Commercial pilot.

(v) Airline transport pilot.

(2) Flight instructor certificates.

(3) Ground instructor certificates.

(b) The following ratings are placed on a pilot certificate (other than student pilot) when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought:

(1) Aircraft category ratings—

(i) Airplane.

(ii) Rotorcraft.

(iii) Glider.

(iv) Lighter-than-air.

(v) Powered-lift.

(2) Airplane class ratings—

(i) Single-engine land.

(ii) Multiengine land.

(iii) Single-engine sea.

(iv) Multiengine sea.

(3) Rotorcraft class ratings—

(i) Helicopter.

(ii) Gyroplane.

(4) Lighter-than-air class ratings—

(i) Airship.

(ii) Balloon.

(5) Aircraft type ratings—

(i) Large aircraft other than lighter-than-air.

(ii) Turbojet-powered airplanes.

(iii) Other aircraft type ratings specified by the Administrator through the aircraft type certification procedures.

(6) Instrument ratings (on private and commercial pilot certificates only)—

(i) Instrument—Airplane.

(ii) Instrument—Helicopter.

(iii) Instrument—Powered-lift.

(c) The following ratings are placed on a flight instructor certificate when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought:

(1) Aircraft category ratings—

(i) Airplane.

(ii) Rotorcraft.

(iii) Glider.

(iv) Powered-lift.

(2) Airplane class ratings—

(i) Single-engine.

(ii) Multiengine.

(3) Rotorcraft class ratings—

(i) Helicopter.

(ii) Gyroplane.

(4) Instrument ratings—

(i) Instrument—Airplane.

(ii) Instrument—Helicopter.

(iii) Instrument—Powered-lift.

(d) The following ratings are placed on a ground instructor certificate when an applicant satisfactorily accomplishes the training and certification requirements for the rating sought:

(1) Basic.

(2) Advanced.

(3) Instrument.

§ 61.7 Obsolete certificates and ratings.

(a) The holder of a free-balloon pilot certificate issued before November 1, 1973, may not exercise the privileges of that certificate.

(b) The holder of a pilot certificate that bears any of the following category

ratings without an associated class rating may not exercise the privileges of that category rating:

(1) Rotorcraft.

(2) Lighter-than-air.

(3) Helicopter.

(4) Autogyro.

§ 61.9 [Reserved]

§ 61.11 Expired pilot certificates and reissuance.

(a) No person who holds an expired pilot certificate or rating may:

(1) Exercise the privileges of that pilot certificate or rating; or

(2) Act as pilot in command or as a required crewmember of an aircraft of the same category and class specified on the expired pilot certificate or rating.

(b) The following pilot certificates and ratings have expired and may not be reissued:

(1) An airline transport pilot certificate issued before May 1, 1949, or an airline transport pilot certificate that contains a horsepower limitation;

(2) A private or commercial pilot certificate issued before July 1, 1945; and

(3) A pilot certificate with a lighter-than-air or free-balloon rating issued before July 1, 1945.

(c) A pilot certificate issued on the basis of a foreign pilot license will expire on the date the foreign license expires.

(d) An airline transport pilot certificate issued after April 30, 1949, that bears an expiration date but does not contain a horsepower limitation may be reissued without an expiration date.

(e) A private or commercial pilot certificate issued after June 30, 1945, that bears an expiration date may be reissued without an expiration date.

(f) A pilot certificate with a lighter-than-air or free-balloon rating issued after June 30, 1945, that bears an expiration date may be reissued without an expiration date.

(g) A U.S. pilot certificate issued on the basis of a foreign pilot license that does not have an expiration date may be issued without an expiration date.

§ 61.13 Issuance of airman certificates, ratings, and authorizations.

(a) An applicant for an airman certificate, rating, or authorization under this part must make that application on a form and in a manner acceptable to the Administrator.

(b) An applicant who is neither a citizen of the United States nor a resident alien of the United States:

(1) Must show evidence that the appropriate fee has been paid when that person applies for a—

(i) Student pilot certificate that is issued outside the United States; or

(ii) Knowledge test or practical test for a U.S. airman certificate or rating issued under this part, if the test is administered outside the United States.

(2) May be refused issuance of any U.S. airman certificate, rating, or authorization by the Administrator.

(c) Except as provided in paragraph (b)(2) of this section, an applicant who satisfactorily accomplishes the training and certification requirements for the certificate, rating, or authorization sought is entitled to receive that airman certificate, rating, or authorization.

(d) *Limitations.* (1) An applicant who cannot comply with certain areas of operation required on the practical test because of physical limitations may be issued an airman certificate, rating, or authorization with the appropriate limitation placed on the applicant's airman certificate provided the—

(i) Applicant is able to meet all other certification requirements for the airman certificate, rating, or authorization sought;

(ii) Physical limitation has been recorded with the FAA on the applicant's medical records; and

(iii) The Administrator determines that the applicant's inability to perform the particular area of operation will not adversely affect safety.

(2) A limitation placed on a person's airman certificate may be removed, provided that person demonstrates for an examiner satisfactory proficiency in the area of operation appropriate to the airman certificate, rating, or authorization sought.

(e) *Additional requirements for Category II and Category III pilot authorizations.* (1) A Category II or Category III pilot authorization is issued by a letter of authorization as a part of an applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains the following limitations—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) The limitations on a Category II or Category III pilot authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) To meet the experience requirement of paragraph (e)(3) of this section, and for the practical test required by this part for a Category II or a Category III pilot authorization, a flight simulator or flight training device may be used if it is approved by the Administrator for such use.

(f) Unless otherwise authorized by the Administrator, a person whose pilot, flight instructor, or ground instructor certificate has been suspended may not apply for any certificate, rating, or authorization during the period of suspension.

(g) Unless otherwise authorized by the Administrator, a person whose pilot, flight instructor, or ground instructor certificate has been revoked may not apply for any certificate, rating, or authorization for 1 year after the date of revocation.

§ 61.14 Refusal to submit to a drug or alcohol test.

(a) This section applies to an employee who performs a function listed in appendix I to part 121 or appendix J to part 121 of this chapter directly or by contract for a part 121 air carrier, a part 135 air carrier, or for a person conducting operations as specified in § 135.1(a)(5) of this chapter.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(b) Committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for:

(1) Denial of an application for a certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(c) For the purposes of paragraphs (d), (e), and (f) of this section, a motor vehicle action means:

(1) A conviction after November 29, 1990, for the violation of any Federal or State statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

(3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) Except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AMC–700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. The report must include:

(1) The person's name, address, date of birth, and airman certificate number;

(2) The type of violation that resulted in the conviction or the administrative action;

(3) The date of the conviction or administrative action;

(4) The State that holds the record of conviction or administrative action; and

(5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously reported motor vehicle action.

(f) Failure to comply with paragraph (e) of this section is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the motor vehicle action; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

§ 61.16 Refusal to submit to an alcohol test or to furnish test results.

A refusal to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer in accordance with § 91.17(c) of this chapter, or a refusal to furnish or authorize the release of the test results requested by the Administrator in accordance with § 91.17(c) or (d) of this chapter, is grounds for:

(a) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of that refusal; or

(b) Suspension or revocation of any certificate, rating, or authorization issued under this part.

§ 61.17 Temporary certificate.

(a) A temporary pilot, flight instructor, or ground instructor certificate or rating is issued for up to 120 days, at which time a permanent certificate will be issued to a person whom the Administrator finds qualified under this part.

(b) A temporary pilot, flight instructor, or ground instructor certificate or rating expires:

(1) On the expiration date shown on the certificate;

(2) Upon receipt of the permanent certificate; or

(3) Upon receipt of a notice that the certificate or rating sought is denied or revoked.

§ 61.19 Duration of pilot and instructor certificates.

(a) *General.* The holder of a certificate with an expiration date may not, after that date, exercise the privileges of that certificate.

(b) *Student pilot certificate.* A student pilot certificate expires 24 calendar months from the month in which it is issued.

(c) *Other pilot certificates.* A pilot certificate (other than a student pilot certificate) issued under this part is issued without a specific expiration date. The holder of a pilot certificate issued on the basis of a foreign pilot license may exercise the privileges of that certificate only while that person's foreign pilot license is effective.

(d) *Flight instructor certificate.* A flight instructor certificate:

(1) Is effective only while the holder has a current pilot certificate; and

(2) Except as specified in § 61.197(b) of this part, expires 24 calendar months from the month in which it was issued or renewed.

(e) *Ground instructor certificate.* A ground instructor certificate issued under this part is issued without a specific expiration date.

(f) *Surrender, suspension, or revocation.* Any certificate issued under this part ceases to be effective if it is surrendered, suspended, or revoked.

(g) *Return of certificates.* The holder of any certificate issued under this part that has been suspended or revoked must return that certificate to the FAA when requested to do so by the Administrator.

§ 61.21 Duration of a Category II and a Category III pilot authorization (for other than part 121 and part 135 use).

(a) A Category II pilot authorization or a Category III pilot authorization expires at the end of the sixth calendar month after the month in which it was issued or renewed.

(b) Upon passing a practical test for a Category II or Category III pilot authorization, the authorization may be renewed for each type of aircraft for which the authorization is held.

(c) A Category II or Category III pilot authorization for a specific type aircraft for which an authorization is held will not be renewed beyond 12 calendar months from the month the practical test was accomplished in that type aircraft.

(d) If the holder of a Category II or Category III pilot authorization passes the practical test for a renewal in the month before the authorization expires, the holder is considered to have passed it during the month the authorization expired.

§ 61.23 Medical certificates: Requirement and duration.

(a) *Operations requiring a medical certificate.* Except as provided in paragraph (b) of this section, a person:

(1) Must hold a first-class medical certificate when exercising the privileges of an airline transport pilot certificate;

(2) Must hold at least a second-class medical certificate when exercising the privileges of a commercial pilot certificate; or

(3) Must hold at least a third-class medical certificate—

(i) When exercising the privileges of a private pilot certificate;

(ii) When exercising the privileges of a recreational pilot certificate;

(iii) Except as specified in paragraph (b)(3) of this section, when exercising the privileges of a student pilot certificate;

(iv) When exercising the privileges of a flight instructor certificate, except for a flight instructor certificate with a glider category rating, if the person is acting as the pilot in command or is serving as a required crewmember; or

(v) Except for a glider category rating or a balloon class rating, prior to taking a practical test that is performed in an aircraft for a certificate or rating at the recreational, private, commercial, or airline transport pilot certificate level.

(b) *Operations not requiring a medical certificate.* A person is not required to hold a medical certificate:

(1) When exercising the privileges of a pilot certificate with a glider category rating;

(2) When exercising the privileges of a pilot certificate with a balloon class rating;

(3) When exercising the privileges of a student pilot certificate while seeking a pilot certificate with a glider category rating or balloon class rating;

(4) When exercising the privileges of a flight instructor certificate with a glider category rating;

(5) When exercising the privileges of a flight instructor certificate if the person is not acting as pilot in command or serving as a required crewmember;

(6) When exercising the privileges of a ground instructor certificate;

(7) When serving as an examiner or check airman during the administration of a test or check for a certificate, rating, or authorization conducted in an approved flight simulator or approved flight training device; or

(8) When taking a test or check for a certificate, rating, or authorization conducted in an approved flight simulator or approved flight training device.

(c) *Duration of a medical certificate.* (1) A first-class medical certificate expires at the end of the last day of—

(i) The sixth month after the month of the date of examination shown on the certificate for operations requiring an airline transport pilot certificate;

(ii) The 12th month after the month of the date of examination shown on the certificate for operations requiring a commercial pilot certificate or an air traffic control tower operator certificate; and

(iii) The period specified in paragraph (c)(3) of this section for operations requiring a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required crewmember in operations other than glider or balloon), or a student pilot certificate.

(2) A second-class medical certificate expires at the end of the last day of—

(i) The 12th month after the month of the date of examination shown on the certificate for operations requiring a commercial pilot certificate or an air traffic control tower operator certificate; and

(ii) The period specified in paragraph (c)(3) of this section for operations requiring a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required crewmember in operations other than glider or balloon), or a student pilot certificate.

(3) A third-class medical certificate for operations requiring a recreational pilot certificate, a private pilot certificate, a flight instructor certificate (when acting as pilot in command or a required crewmember in operations other than glider or balloon), or a student pilot certificate issued—

(i) Before September 16, 1996, expires at the end of the 24th month after the month of the date of examination shown on the certificate; or

(ii) On or after September 16, 1996, expires at the end of:

(A) The 36th month after the month of the date of the examination shown on the certificate if the person has not reached his or her 40th birthday on or before the date of examination; or

(B) The 24th month after the month of the date of the examination shown on the certificate if the person has reached his or her 40th birthday on or before the date of the examination.

§ 61.25 Change of name.

(a) An application to change the name on a certificate issued under this part must be accompanied by the applicant's:

(1) Current airman certificate; and

(2) A copy of the marriage license, court order, or other document verifying the name change.

(b) The documents in paragraph (a) of this section will be returned to the applicant after inspection.

§ 61.27 Voluntary surrender or exchange of certificate.

(a) The holder of a certificate issued under this part may voluntarily surrender it for:

(1) Cancellation;

(2) Issuance of a lower grade certificate; or

(3) Another certificate with specific ratings deleted.

(b) Any request made under paragraph (a) of this section must include the following signed statement or its equivalent: ''This request is made for my own reasons, with full knowledge that my (insert name of certificate or rating, as appropriate) may not be reissued to me unless I again pass the tests prescribed for its issuance.''

§ 61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.

(a) A request for the replacement of a lost or destroyed airman certificate issued under this part shall be made by letter to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and shall be accompanied by a check or money order for the appropriate fee payable to the FAA.

(b) A request for the replacement of a lost or destroyed medical certificate shall be made by letter to the Department of Transportation, FAA, Aeromedical Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and shall be accompanied by a check or money order for the appropriate fee payable to the FAA.

(c) A request for the replacement of a lost or destroyed knowledge test report shall be made by letter to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and shall be accompanied by a check or money order for the appropriate fee payable to the FAA.

(d) The letter requesting replacement of a lost or destroyed airman certificate, medical certificate, or knowledge test report must state:

(1) The name of the person;

(2) The permanent mailing address (including ZIP code), or if the permanent mailing address includes a post office box number, then the person's current residential address;

(3) The social security number;

(4) The date and place of birth of the certificate holder; and

(5) Any available information regarding the—

(i) Grade, number, and date of issuance of the certificate, and the ratings, if applicable;

(ii) Date of the medical examination, if applicable; and

(iii) Date the knowledge test was taken, if applicable.

(e) A person who has lost an airman certificate, medical certificate, or knowledge test report may obtain a facsimile from the FAA confirming that it was issued and the:

(1) Facsimile may be carried as an airman certificate, medical certificate, or knowledge test report, as appropriate, for up to 60 days pending the person's receipt of a duplicate under paragraph (a), (b), or (c) of this section, unless the person has been notified that the certificate has been suspended or revoked.

(2) Request for such a facsimile must include the date on which a duplicate certificate or knowledge test report was previously requested.

§ 61.31 Type rating requirements, additional training, and authorization requirements.

(a) *Type ratings required.* A person who acts as a pilot in command of any of the following aircraft must hold a type rating for that aircraft:

(1) Large aircraft (except lighter-than-air).

(2) Turbojet-powered airplanes.

(3) Other aircraft specified by the Administrator through aircraft type certificate procedures.

(b) *Authorization in lieu of a type rating.* A person may be authorized to operate an aircraft requiring a type rating without a type rating for up to 60 days, provided:

(1) The Administrator has authorized the flight or series of flights;

(2) The Administrator has determined that an equivalent level of safety can be achieved through the operating limitations on the authorization;

(3) The person shows that compliance with paragraph (a) of this section is impracticable for the flight or series of flights; and

(4) The flight—

(i) Involves only a ferry flight, training flight, test flight, or practical test for a pilot certificate or rating;

(ii) Is within the United States;

(iii) Does not involve operations for compensation or hire unless the compensation or hire involves payment for the use of the aircraft for training or taking a practical test; and

(iv) Involves only the carriage of flight crewmembers considered essential for the flight.

(5) If the flight or series of flights cannot be accomplished within the time limit of the authorization, the Administrator may authorize an additional period of up to 60 days to accomplish the flight or series of flights.

(c) *Aircraft category, class, and type ratings: Limitations on the carriage of persons, or operating for compensation or hire.* Unless a person holds a category, class, and type rating (if a class and type rating is required) that applies to the aircraft, that person may not act as pilot in command of an aircraft that is carrying another person, or is operated for compensation or hire. That person also may not act as pilot in command of that aircraft for compensation or hire.

(d) *Aircraft category, class, and type ratings: Limitations on operating an aircraft as the pilot in command.* To serve as the pilot in command of an aircraft, a person must:

(1) Hold the appropriate category, class, and type rating (if a class rating and type rating is required) for the aircraft to be flown;

(2) Be receiving training for the purpose of obtaining an additional pilot certificate and rating that are appropriate to that aircraft, and be under the supervision of an authorized instructor; or

(3) Have received training required by this part that is appropriate to the aircraft category, class, and type rating (if a class or type rating is required) for the aircraft to be flown, and have received the required endorsements from an instructor who is authorized to provide the required endorsements for solo flight in that aircraft.

(e) *Exceptions.* (1) This section does not require a category and class rating for aircraft not type certificated as airplanes, rotorcraft, gliders, powered-lift, or lighter-than-air aircraft.

(2) The rating limitations of this section do not apply to:

(i) An applicant when taking a practical test given by an examiner;

(ii) The holder of a student pilot certificate;

(iii) The holder of a pilot certificate when operating an aircraft under the authority of an experimental or provisional aircraft type certificate; and

(iv) The holder of a pilot certificate with a lighter-than-air category rating when operating a balloon.

(f) *Additional training required for operating complex airplanes.* (1) Except as provided in paragraph (f)(2) of this section, no person may act as pilot in command of a complex airplane (an airplane that has a retractable landing gear, flaps, and a controllable pitch propeller; or, in the case of a seaplane, flaps and a controllable pitch propeller), unless the person has—

(i) Received and logged ground and flight training from an authorized instructor in a complex airplane, or in an approved flight simulator or approved flight training device that is representative of a complex airplane, and has been found proficient in the operation and systems of the airplane; and

(ii) Received a one-time endorsement in the pilot's logbook from an authorized instructor who certifies the person is proficient to operate a complex airplane.

(2) The training and endorsement required by paragraph (f)(1) of this section is not required if the person has logged flight time as pilot in command of a complex airplane, or in an approved flight simulator or approved flight training device that is representative of a complex airplane prior to August 4, 1997.

(g) *Additional training required for operating high-performance airplanes.* (1) Except as provided in paragraph (g)(2) of this section, no person may act as pilot in command of a high-performance airplane (an airplane with an engine of more than 200 horsepower), unless the person has—

(i) Received and logged ground and flight training from an authorized instructor in a high-performance airplane, or in an approved flight simulator or approved flight training device that is representative of a high-performance airplane, and has been found proficient in the operation and systems of the airplane; and

(ii) Received a one-time endorsement in the pilot's logbook from an authorized instructor who certifies the person is proficient to operate a high-performance airplane.

(2) The training and endorsement required by paragraph (g)(1) of this section is not required if the person has logged flight time as pilot in command of a high-performance airplane, or in an approved flight simulator or approved flight training device that is representative of a high-performance airplane prior to August 4, 1997.

(h) *Additional training required for operating pressurized aircraft capable of operating at high altitudes.* (1) Except as provided in paragraph (h)(3) of this section, no person may act as pilot in command of a pressurized aircraft (an aircraft that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL), unless that person has received and logged ground training from an authorized instructor. The ground training must include at least the following subjects—

(i) High-altitude aerodynamics and meteorology;

(ii) Respiration;

(iii) Effects, symptoms, and causes of hypoxia and any other high-altitude sickness;

(iv) Duration of consciousness without supplemental oxygen;

(v) Effects of prolonged usage of supplemental oxygen;

(vi) Causes and effects of gas expansion and gas bubble formation;

(vii) Preventive measures for eliminating gas expansion, gas bubble formation, and high-altitude sickness;

(viii) Physical phenomena and incidents of decompression; and

(ix) Any other physiological aspects of high-altitude flight.

(2) Except as provided in paragraph (h)(3) of this section, no person may act as pilot in command of a pressurized aircraft unless that person has—

(i) Received and logged training from an authorized instructor in a pressurized aircraft, or in an approved flight simulator or approved flight training device that is representative of a pressurized aircraft, which includes normal cruise flight operations while operating above 25,000 feet MSL, proper emergency procedures for simulated rapid decompression without actually depressurizing the aircraft, and emergency descent procedures; and

(ii) An endorsement in the person's logbook or training record from an authorized instructor who found the person proficient in the operation of a pressurized aircraft.

(3) The training and endorsement required by paragraphs (h)(1) and (h)(2) of this section is not required if that person can document satisfactory accomplishment of any of the following in a pressurized aircraft, or in an approved flight simulator or approved flight training device that is representative of a pressurized aircraft—

(i) Serving as pilot in command before April 15, 1991;

(ii) Completing a practical test for a pilot certificate or rating before April 15, 1991;

(iii) Completing an official pilot in command check conducted by the military services of the United States; or

(iv) Completing a pilot in command proficiency check under part 121, 125, or 135 of this chapter conducted by the Administrator or by an approved check airman.

(i) *Additional training required by the aircraft's type certificate.* No person may serve as pilot in command of an aircraft that the Administrator has determined requires aircraft type-specific training unless that person has:

(1) Received and logged type-specific training in the aircraft, or in an approved flight simulator or an approved flight training device that is representative of that type of aircraft; and

(2) Received a logbook endorsement from an authorized instructor who has found the person proficient in the operation of the aircraft and its systems.

(j) *Additional training required for operating tailwheel airplanes.* Except as provided in paragraph (j)(3) of this section, no person may act as pilot in command of a tailwheel airplane unless that person has:

(1) Received and logged flight training from an authorized instructor in a tailwheel airplane on the maneuvers and procedures listed in paragraph (j)(2) of this section.

(2) Received an endorsement in the person's logbook from an authorized instructor who found the person proficient in the operation of a tailwheel airplane, to include at least normal and crosswind takeoffs and landings, wheel landings (unless the manufacturer has recommended against such landings), and go-around procedures.

(3) The training and endorsement required by this paragraph is not required if the person logged pilot-in-command time in a tailwheel airplane before April 15, 1991.

(k) *Additional training required for operating a glider.* (1) No person may act as pilot in command of a glider:

(i) Using ground-tow procedures, unless that person has satisfactorily accomplished ground and flight training on ground-tow procedures and operations, and has received an endorsement from an authorized instructor who certifies in that pilot's logbook that the pilot has been found proficient in ground-tow procedures and operations;

(ii) Using aerotow procedures, unless that person has satisfactorily accomplished ground and flight training on aerotow procedures and operations, and has received an endorsement from an authorized instructor who certifies in that pilot's logbook that the pilot has been found proficient in aerotow procedures and operations; and

(iii) Using self-launch procedures, unless that person has satisfactorily accomplished ground and flight training on self-launch procedures and operations, and has received an endorsement from an authorized instructor who certifies in that pilot's logbook that the pilot has been found proficient in self-launch procedures and operations.

(2) The holder of a glider rating issued prior to August 4, 1997 is considered to be in compliance with the training and logbook endorsement requirements of this paragraph for the specific operating privilege for which the holder is already qualified.

§ 61.33 Tests: General procedure.

Tests prescribed by or under this part are given at times and places, and by persons designated by the Administrator.

§ 61.35 Knowledge test: Prerequisites and passing grades.

(a) An applicant for a knowledge test must have:

(1) Received an endorsement from an authorized instructor certifying that the applicant accomplished a ground-training or a home-study course required by this part for the certificate or rating sought and is prepared for the knowledge test; and

(2) Proper identification at the time of application that contains the applicant's—

(i) Photograph;

(ii) Signature;

(iii) Date of birth, which shows the applicant meets or will meet the age requirements of this part for the certificate sought before the expiration date of the airman knowledge test report; and

(iv) Actual residential address, if different from the applicant's mailing address.

(b) The Administrator shall specify the minimum passing grade for the knowledge test.

§ 61.37 Knowledge tests: Cheating or other unauthorized conduct.

(a) An applicant for a knowledge test may not:

(1) Copy or intentionally remove any knowledge test;

(2) Give to another applicant or receive from another applicant any part or copy of a knowledge test;

(3) Give assistance on, or receive assistance on, a knowledge test during the period that test is being given;

(4) Take any part of a knowledge test on behalf of another person;

(5) Be represented by, or represent, another person for a knowledge test;

(6) Use any material or aid during the period that the test is being given, unless specifically authorized to do so by the Administrator; and

(7) Intentionally cause, assist, or participate in any act prohibited by this paragraph.

(b) An applicant who the Administrator finds has committed an act prohibited by paragraph (a) of this section is prohibited, for 1 year after the date of committing that act, from:

(1) Applying for any certificate, rating, or authorization issued under this chapter; and

(2) Applying for and taking any test under this chapter.

(c) Any certificate or rating held by an applicant may be suspended or revoked if the Administrator finds that person has committed an act prohibited by paragraph (a) of this section.

§ 61.39 Prerequisites for practical tests.

(a) Except as provided in paragraphs (b) and (c) of this section, to be eligible for a practical test for a certificate or rating issued under this part, an applicant must:

(1) Pass the required knowledge test within the 24-calendar-month period preceding the month the applicant completes the practical test, if a knowledge test is required;

(2) Present the knowledge test report at the time of application for the practical test, if a knowledge test is required;

(3) Have satisfactorily accomplished the required training and obtained the aeronautical experience prescribed by this part for the certificate or rating sought;

(4) Hold at least a current third-class medical certificate, if a medical certificate is required;

(5) Meet the prescribed age requirement of this part for the issuance of the certificate or rating sought;

(6) Except as provided in paragraph (c) of this section, have an endorsement in the applicant's logbook or training record that has been signed by an authorized instructor who certifies that the applicant—

(i) Has received and logged training time within 60 days preceding the date of application in preparation for the practical test;

(ii) Is prepared for the required practical test; and

(iii) Has demonstrated satisfactory knowledge of the subject areas in which the applicant was deficient on the airman knowledge test; and

(7) Have a completed and signed application form.

(b) Notwithstanding the provisions of paragraphs (a)(1) and (2) of this section, an applicant for an airline transport pilot certificate or an additional rating to an airline transport certificate may take the practical test for that certificate or rating with an expired knowledge test report, provided that the applicant:

(1) Is employed as a flight crewmember by a certificate holder under part 121, 125, or 135 of this chapter at the time of the practical test and has satisfactorily accomplished that operator's approved—

(i) Pilot in command aircraft qualification training program that is appropriate to the certificate and rating sought; and

(ii) Qualification training requirements appropriate to the certificate and rating sought; or

(2) Is employed as a flight crewmember in scheduled U.S. military air transport operations at the time of the practical test, and has accomplished the pilot in command aircraft qualification training program that is appropriate to the certificate and rating sought.

(c) A person is not required to comply with the provisions of paragraph (a)(6) of this section if that person:

(1) Holds a foreign-pilot license issued by a contracting State to the Convention on International Civil Aviation that authorizes at least the pilot privileges of the airman certificate sought;

(2) Is applying for a type rating only, or a class rating with an associated type rating; or

(3) Is applying for an airline transport pilot certificate or an additional rating to an airline transport pilot certificate in an aircraft that does not require an aircraft type rating practical test.

(d) If all increments of the practical test for a certificate or rating are not completed on one date, all remaining increments of the test must be satisfactorily completed not more than 60 calendar days after the date on which the applicant began the test.

(e) If all increments of the practical test for a certificate or a rating are not satisfactorily completed within 60 calendar days after the date on which the applicant began the test, the applicant must retake the entire practical test, including those increments satisfactorily completed.

§ 61.41 Flight training received from flight instructors not certificated by the FAA.

(a) A person may credit flight training toward the requirements of a pilot certificate or rating issued under this part, if that person received the training from:

(1) A flight instructor of an Armed Force in a program for training military pilots of either—

(i) The United States; or

(ii) A foreign contracting State to the Convention on International Civil Aviation.

(2) A flight instructor who is authorized to give such training by the licensing authority of a foreign contracting State to the Convention on International Civil Aviation, and the flight training is given outside the United States.

(b) A flight instructor described in paragraph (a) of this section is only authorized to give endorsements to show training given.

§ 61.43 Practical tests: General procedures.

(a) Except as provided in paragraph (b) of this section, the ability of an applicant for a certificate or rating issued under this part to perform the required tasks on the practical test is based on that applicant's ability to safely:

(1) Perform the tasks specified in the areas of operation for the certificate or rating sought within the approved standards;

(2) Demonstrate mastery of the aircraft with the successful outcome of each task performed never seriously in doubt;

(3) Demonstrate satisfactory proficiency and competency within the approved standards;

(4) Demonstrate sound judgment; and

(5) Demonstrate single-pilot competence if the aircraft is type certificated for single-pilot operations.

(b) If an applicant does not demonstrate single pilot proficiency, as required in paragraph (a)(5) of this section, a limitation of ''Second in Command Required'' will be placed on the applicant's airman certificate. The limitation may be removed if the applicant passes the appropriate practical test by demonstrating single-pilot competency in the aircraft in which single-pilot privileges are sought.

(c) If an applicant fails any area of operation, that applicant fails the practical test.

(d) An applicant is not eligible for a certificate or rating sought until all the areas of operation are passed.

(e) The examiner or the applicant may discontinue a practical test at any time:

(1) When the applicant fails one or more of the areas of operation; or

(2) Due to inclement weather conditions, aircraft airworthiness, or any other safety-of-flight concern.

(f) If a practical test is discontinued, the applicant is entitled credit for those areas of operation that were passed, but only if the applicant:

(1) Passes the remainder of the practical test within the 60-day period after the date the practical test was discontinued;

(2) Presents to the examiner for the retest the original notice of disapproval form or the letter of discontinuance form, as appropriate;

(3) Satisfactorily accomplishes any additional training needed and obtains the appropriate instructor endorsements, if additional training is required; and

(4) Presents to the examiner for the retest a properly completed and signed application.

§ 61.45 Practical tests: Required aircraft and equipment.

(a) *General.* Except as provided in paragraph (a)(2) of this section or when permitted to accomplish the entire flight increment of the practical test in an approved flight simulator or an

approved flight training device, an applicant for a certificate or rating issued under this part must furnish:

(1) An aircraft of U.S. registry for each required test that—

(i) Is of the category, class, and type, if applicable, for which the applicant is applying for a certificate or rating; and

(ii) Has a current standard, limited, or primary airworthiness certificate.

(2) At the discretion of the examiner who administers the practical test, the applicant may furnish—

(i) An aircraft that has a current airworthiness certificate other than standard, limited, or primary, but that otherwise meets the requirement of paragraph (a)(1) of this section;

(ii) An aircraft of the same category, class, and type, if applicable, of foreign registry that is properly certificated by the country of registry; or

(iii) A military aircraft of the same category, class, and type, if applicable, for which the applicant is applying for a certificate or rating.

(b) *Required equipment (other than controls).* An aircraft used for a practical test must have:

(1) The equipment for each area of operation required for the practical test;

(2) No prescribed operating limitations that prohibit its use in any of the areas of operation required for the practical test;

(3) Except as provided in paragraph (e) of this section, at least two pilot stations with adequate visibility for each person to operate the aircraft safely; and

(4) Cockpit and outside visibility adequate to evaluate the performance of the applicant when an additional jump seat is provided for the examiner.

(c) *Required controls.* An aircraft (other than a lighter-than-air aircraft) used for a practical test must have engine power controls and flight controls that are easily reached and operable in a conventional manner by both pilots, unless the examiner determines that the practical test can be conducted safely in the aircraft without the controls being easily reached.

(d) *Simulated instrument flight equipment.* An applicant for a practical test that involves maneuvering an aircraft solely by reference to instruments must furnish:

(1) Equipment on board the aircraft that permits the applicant to pass the areas of operation that apply to the rating sought; and

(2) A device that prevents the applicant from having visual reference outside the aircraft, but does not prevent the examiner from having visual reference outside the aircraft, and is otherwise acceptable to the Administrator.

(e) *Aircraft with single controls.* A practical test may be conducted in an aircraft having a single set of controls, provided the:

(1) Examiner agrees to conduct the test;

(2) Test does not involve a demonstration of instrument skills; and

(3) Proficiency of the applicant can be observed by an examiner who is in a position to observe the applicant.

§ 61.47 Status of an examiner who is authorized by the Administrator to conduct practical tests.

(a) An examiner represents the Administrator for the purpose of conducting practical tests for certificates and ratings issued under this part and to observe an applicant's ability to perform the areas of operation on the practical test.

(b) The examiner is not the pilot in command of the aircraft during the practical test unless the examiner agrees to act in that capacity for the flight or for a portion of the flight by prior arrangement with:

(1) The applicant; or

(2) A person who would otherwise act as pilot in command of the flight or for a portion of the flight.

(c) Notwithstanding the type of aircraft used during the practical test, the applicant and the examiner (and any other occupants authorized to be on board by the examiner) are not subject to the requirements or limitations on the carriage of passengers that are specified in this chapter.

§ 61.49 Retesting after failure.

(a) An applicant for a knowledge or practical test who fails that test may reapply for the test only after the applicant has received:

(1) The necessary training from an authorized instructor who has determined that the applicant is proficient to pass the test; and

(2) An endorsement from an authorized instructor who gave the applicant the additional training.

(b) An applicant for a flight instructor certificate with an airplane category rating or, for a flight instructor certificate with a glider category rating, who has failed the practical test due to deficiencies in instructional proficiency on stall awareness, spin entry, spins, or spin recovery must:

(1) Comply with the requirements of paragraph (a) of this section before being retested;

(2) Bring an aircraft to the retest that is of the appropriate aircraft category for the rating sought and is certificated for spins; and

(3) Demonstrate satisfactory instructional proficiency on stall awareness, spin entry, spins, and spin recovery to an examiner during the retest.

§ 61.51 Pilot logbooks.

(a) *Training time and aeronautical experience.* Each person must document and record the following time in a manner acceptable to the Administrator:

(1) Training and aeronautical experience used to meet the requirements for a certificate, rating, or flight review of this part.

(2) The aeronautical experience required for meeting the recent flight experience requirements of this part.

(b) *Logbook entries.* For the purposes of meeting the requirements of paragraph (a) of this section, each person must enter the following information for each flight or lesson logged:

(1) General—

(i) Date.

(ii) Total flight time.

(iii) Location where the aircraft departed and arrived, or for lessons in an approved flight simulator or an approved flight training device, the location where the lesson occurred.

(iv) Type and identification of aircraft, approved flight simulator, or approved flight training device, as appropriate.

(v) The name of a safety pilot, if required by § 91.109(b) of this chapter.

(2) Type of pilot experience or training—

(i) Solo.

(ii) Pilot in command.

(iii) Second in command.

(iv) Flight and ground training received from an authorized instructor.

(v) Training received in an approved flight simulator or approved flight training device from an authorized instructor.

(3) Conditions of flight—

(i) Day or night.

(ii) Actual instrument.

(iii) Simulated instrument conditions in flight, an approved flight simulator, or an approved flight training device.

(c) *Logging of pilot time.* The pilot time described in this section may be used to:

(1) Apply for a certificate or rating issued under this part; or

(2) Satisfy the recent flight experience requirements of this part.

(d) *Logging of solo flight time.* Except for a student pilot acting as pilot in command of an airship requiring more than one flight crewmember, a pilot may log as solo flight time only that flight time when the pilot is the sole occupant of the aircraft.

(e) *Logging pilot-in-command flight time.* (1) A recreational, private, or commercial pilot may log pilot-in-

command time only for that flight time during which that person is—

(i) The sole manipulator of the controls of an aircraft for which the pilot is rated; or

(ii) Except for a recreational pilot, when acting as pilot in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

(2) An airline transport pilot may log as pilot-in-command time all of the flight time while acting as pilot-in-command of an operation requiring an airline transport pilot certificate.

(3) An authorized instructor may log as pilot-in-command time all flight time while acting as an authorized instructor.

(4) A student pilot may log pilot-in-command time when the student pilot—

(i) Is the sole occupant of the aircraft;

(ii) Has a current solo flight endorsement as required under § 61.87 of this part; and

(iii) Is undergoing training for a pilot certificate or rating, is acting as pilot in command of an airship requiring more than one flight crewmember, or is logging pilot-in-command flight time to obtain the pilot-in-command flight experience requirements for a pilot certificate or aircraft rating.

(f) *Logging second-in-command flight time.* A person may log second-in-command flight time only for that flight time during which that person:

(1) Is qualified in accordance with the second-in-command requirements of § 61.55 of this part, and occupies a crewmember station in an aircraft that requires more than one pilot by the aircraft's type certificate; or

(2) Holds the appropriate category, class, and instrument rating (if an instrument rating is required for the flight) for the aircraft being flown, and more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is being conducted.

(g) *Logging instrument flight time.* (1) A person may log instrument flight time only for that flight time when the person operates the aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(2) An authorized instructor may log instrument flight time when conducting instrument flight instruction in actual instrument flight conditions.

(3) For the purposes of logging instrument flight time to meet the recent instrument experience requirements of § 61.57(c) of this part, the following information must be recorded in the person's logbook—

(i) The location and type of each instrument approach accomplished; and

(ii) The name of the safety pilot, if required.

(4) An approved flight simulator or approved flight training device may be used by a person to log instrument flight time, provided an authorized instructor is present during the simulated flight.

(h) *Logging training time.* (1) A person may log training time when that person receives training from an authorized instructor in an aircraft, approved flight simulator, or approved flight training device.

(2) The training time must be logged in a logbook and must:

(i) Be endorsed in a legible manner by the authorized instructor; and

(ii) Include a description of the training given, the length of the training lesson, and the instructor's signature, certificate number, and certificate expiration date.

(i) *Presentation of required documents.* (1) Persons must present their pilot certificate, medical certificate, logbook, or any other record required by this part for inspection upon a reasonable request by—

(i) The Administrator;

(ii) An authorized representative from the National Transportation Safety Board; or

(iii) Any Federal, State, or local law enforcement officer.

(2) A student pilot must carry the following items in the aircraft on all solo cross-country flights as evidence of the required instructor clearances and endorsements—

(i) Pilot logbook;

(ii) Student pilot certificate; and

(iii) Any other record required by this section.

(3) A recreational pilot must carry his or her logbook with the required instructor endorsements on all flights when serving as pilot in command or as a required flight crewmember for flights of more than 50 nautical miles from an airport where training was received.

§ 61.53 Prohibition on operations during medical deficiency.

(a) *Operations that require a medical certificate.* Except as provided for in paragraph (b) of this section, a person who holds a current medical certificate issued under part 67 of this chapter shall not act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person:

(1) Knows or has reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate necessary for the pilot operation; or

(2) Is taking medication or receiving other treatment for a medical condition that results in the person being unable to meet the requirements for the medical certificate necessary for the pilot operation.

(b) *Operations that do not require a medical certificate.* For operations provided for in § 61.23(b) of this part, a person shall not act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person knows or has reason to know of any medical condition that would make the person unable to operate the aircraft in a safe manner.

§ 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (d) of this section, no person may serve as a second in command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second in command unless that person holds:

(1) At least a current private pilot certificate with the appropriate category and class rating; and

(2) An instrument rating that applies to the aircraft being flown if the flight is under IFR.

(b) Except as provided in paragraph (d) of this section, no person may serve as a second in command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second in command unless that person has within the previous 12 calendar months:

(1) Become familiar with the following information for the specific type aircraft for which second-in-command privileges are requested—

(i) Operational procedures applicable to the powerplant, equipment, and systems.

(ii) Performance specifications and limitations.

(iii) Normal, abnormal, and emergency operating procedures.

(iv) Flight manual.

(v) Placards and markings.

(2) Except as provided in paragraph (e) of this section, performed and logged pilot time in the type of aircraft or in an approved flight simulator or approved flight training device that represents the type of aircraft for which second-in-command privileges are requested, which includes—

(i) Three takeoffs and three landings as the sole manipulator of the flight controls;

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of pilot in command; and

(iii) Crew resource management training.

(c) If a person complies with the requirements in paragraph (b) of this

section in the calendar month before or the calendar month after the month in which compliance with this section is required, then that person is considered to have accomplished the training and practice in the month it is due.

(d) This section does not apply to a person who is:

(1) Designated and qualified as a pilot in command under part 121, 125, or 135 of this chapter in that specific type of aircraft;

(2) Designated as the second in command under part 121, 125, or 135 of this chapter, in that specific type of aircraft;

(3) Designated as the second in command in that specific type of aircraft for the purpose of receiving flight training required by this section, and no passengers or cargo are carried on the aircraft; or

(4) Designated as a safety pilot for purposes required by § 91.109(b) of this chapter.

(e) The holder of a commercial or airline transport pilot certificate with the appropriate category and class rating is not required to meet the requirements of paragraph (b)(2) of this section, provided the pilot:

(1) Is conducting a ferry flight, aircraft flight test, or evaluation flight of an aircraft's equipment; and

(2) Is not carrying any person or property on board the aircraft, other than necessary for conduct of the flight.

(f) For the purpose of meeting the requirements of paragraph (b) of this section, a person may serve as second in command in that specific type aircraft, provided:

(1) The flight is conducted under day VFR or day IFR; and

(2) No person or property is carried on board the aircraft, other than necessary for conduct of the flight.

(g) Except as provided in paragraph (h) of this section, the requirements of paragraph (b) of this section may be accomplished in an approved flight simulator that is—

(1) Qualified and approved by the Administrator for such purposes; and

(2) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(h) An applicant for an initial second-in-command qualification for a particular type of aircraft who is qualifying under the terms of paragraph (g) of this section must satisfactorily complete a minimum of one takeoff and one landing in an aircraft of the same type for which the qualification is sought.

§ 61.56 Flight review.

(a) Except as provided in paragraphs (b) and (f) of this section, a flight review consists of a minimum of 1 hour of flight training and 1 hour of ground training. The review must include:

(1) A review of the current general operating and flight rules of part 91 of this chapter; and

(2) A review of those maneuvers and procedures that, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a flight to traffic pattern altitude, in lieu of the 1 hour of flight training required in paragraph (a) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has:

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, passed a pilot proficiency check conducted by an examiner, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily accomplished one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) A person who holds a current flight instructor certificate who has, within the period specified in paragraph (c) of this section, satisfactorily completed a renewal of a flight instructor certificate under the provisions in § 61.197 need not accomplish the 1 hour of ground training specified in paragraph (a) of this section.

(g) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recent experience requirements at the discretion of the person conducting the flight review.

(h) A flight simulator or flight training device may be used to meet the flight review requirements of this section subject to the following conditions:

(1) The flight simulator or flight training device must be approved by the Administrator for that purpose.

(2) The approved flight simulator or approved flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(3) Unless the flight review is undertaken in a flight simulator that is approved for landings, the applicant must meet the takeoff and landing requirements of § 61.57(a) or § 61.57(b) of this part.

(4) The approved flight simulator or approved flight training device used must represent an aircraft, or set of aircraft, for which the pilot is rated.

§ 61.57 Recent flight experience: Pilot in command.

(a) *General experience.* (1) Except as provided in paragraph (e) of this section, no person may act as a pilot in command of an aircraft carrying passengers or as a required pilot on board an aircraft that requires more than one pilot flight crewmember unless that person has made at least three takeoffs and three landings within the preceding 90 days, and—

(i) The person acted as the sole manipulator of the flight controls; and

(ii) The required takeoffs and landings were performed in an aircraft of the same category, class, and type (if a type rating is required), and, if the aircraft to be flown is an airplane with a tailwheel, the takeoffs and landings must have been made to a full stop in an airplane with a tailwheel.

(2) For the purpose of meeting the requirements of paragraph (a)(1) of this section, a person may act as a pilot in command of an aircraft under day VFR or day IFR, provided no persons or property are carried on board the aircraft, other than those necessary for the conduct of the flight.

(3) The takeoffs and landings required by paragraph (a)(1) of this section may be accomplished in an approved flight simulator or an approved flight training device that is—

(i) Approved by the Administrator for landings; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(b) *Night takeoff and landing experience.* (1) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an

aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise, unless within the preceding 90 days that person has made at least three takeoffs and three landings to a full stop during the period beginning 1 hour after sunset and ending 1 hour before sunrise.

(2) The takeoffs and landings required by paragraph (b)(1) of this section may be accomplished in a flight simulator that is—

(i) Approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the period described in paragraph (b)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(c) *Recent instrument experience.* Except as provided in paragraph (e) of this section, no person may act as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR, unless within the preceding 6 calendar months, that person has:

(1) For the purpose of obtaining instrument experience in an aircraft (other than a glider), performed and logged under actual or simulated instrument conditions, either in flight appropriate to the appropriate category of aircraft for the instrument privileges sought or in an approved flight simulator or approved flight training device that is representative of the aircraft category for the instrument privileges sought—

(i) At least six instrument approaches;

(ii) Holding procedures; and

(iii) Intercepting and tracking courses through the use of navigation systems.

(2) For the purpose of obtaining instrument experience in a glider, performed and logged under actual or simulated instrument conditions—

(i) At least 3 hours of instrument time in flight, of which 1½ hours may be acquired in an airplane or a glider if no passengers are to be carried; or

(ii) 3 hours of instrument time in flight in a glider if a passenger is to be carried.

(d) *Instrument proficiency check.* Except as provided in paragraph (e) of this section, a person who does not meet the recent instrument experience requirements of paragraph (c) of this section within the prescribed time or within 6 calendar months after the prescribed time may not serve as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR until that person passes an instrument proficiency check consisting of a representative number of tasks required by the instrument rating practical test.

(1) The instrument proficiency check must be—

(i) In an aircraft that is appropriate to the aircraft category;

(ii) In an approved flight simulator or approved flight training device that is representative of the aircraft category (other than a glider); or

(iii) For a glider, in a single-engine airplane or a glider.

(2) The instrument proficiency check must be given by—

(i) An examiner;

(ii) A person authorized by the U.S. Armed Forces to conduct instrument flight tests, provided the person being tested is a member of the U.S. Armed Forces;

(iii) A company check pilot who is authorized to conduct instrument flight tests under part 121, 125, or 135 of this chapter, and provided that both the check pilot and the pilot being tested are employees of that operator;

(iv) An instrument flight instructor who holds the appropriate instrument instructor rating; or

(v) A person approved by the Administrator to conduct instrument practical tests.

(e) *Exceptions.* (1) Paragraphs (a) and (b) of this section do not apply to a pilot in command who is employed by a certificate holder under part 125 and engaged in a flight operation for that certificate holder if the pilot is in compliance with §§ 125.281 and 125.285 of this chapter.

(2) This section does not apply to a pilot in command who is employed by an air carrier certificated under part 121 or 135 and is engaged in a flight operation under part 91, 121, or 135 for that air carrier if the pilot is in compliance with §§ 121.437 and 121.439, or §§ 135.243 and 135.247 of this chapter, as appropriate.

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one pilot.

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must:

(1) Within the preceding 12 calendar months, complete a pilot in command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot in command check in the particular type of aircraft in which that person will serve as pilot in command.

(b) This section does not apply to persons conducting operations under part 121, 125, 133, 135, or 137 of this chapter.

(c) The pilot in command check given in accordance with the provisions of part 121, 125, or 135 of this chapter may be used to satisfy the requirements of this section.

(d) The pilot in command check required by paragraph (a) of this section may be accomplished by satisfactory completion of one of the following:

(1) A pilot in command proficiency check conducted by a person authorized by the Administrator, consisting of the maneuvers and procedures required for a type rating;

(2) The practical test required for a type rating;

(3) The initial or periodic practical test required for the issuance of a pilot examiner or check airman designation; or

(4) A military flight check required for a pilot in command with instrument privileges, in an aircraft that the military requires to be operated by more than one pilot.

(e) A check or test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator approved under this chapter.

(f) For the purpose of meeting the check requirements of paragraph (a) of this section, a person may act as pilot in command of a flight under day VFR conditions or day IFR conditions if no person or property is carried, other than as necessary to demonstrate compliance with this part.

(g) If a pilot takes the check required by this section in the calendar month before or the calendar month after the month in which it is due, the pilot is considered to have taken it in the month in which it was due for the purpose of computing when the next check is due.

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or duplicate thereof, issued under this part;

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part;

(3) Any reproduction for fraudulent purpose of any certificate, rating, or authorization, under this part; or

(4) Any alteration of any certificate, rating, or authorization under this part.

(b) The commission of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any airman certificate, rating, or authorization held by that person.

§ 61.60 Change of address.

The holder of a pilot, flight instructor, or ground instructor certificate who has made a change in permanent mailing address may not, after 30 days from that date, exercise the privileges of the certificate unless the holder has notified in writing the FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, of the new permanent mailing address, or if the permanent mailing address includes a post office box number, then the holder's current residential address.

Subpart B—Aircraft Ratings and Pilot Authorizations

§ 61.61 Applicability.

This subpart prescribes the requirements for the issuance of additional aircraft ratings after a pilot certificate is issued, and the requirements for and limitations of pilot authorizations issued by the Administrator.

§ 61.63 Additional aircraft ratings (other than airline transport pilot).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, for other than an airline transport pilot certificate, an applicant must meet the appropriate requirements of this section, for the additional aircraft rating sought.

(b) *Additional category rating.* An applicant who holds a pilot certificate and applies to add a category rating to that pilot certificate:

(1) Must have received the required training and possess the aeronautical experience prescribed by this part that applies to the pilot certificate for the aircraft category and, if applicable, class rating sought;

(2) Must have an endorsement in his or her logbook or training record from an authorized instructor, and that endorsement must attest that the applicant has been found competent in the aeronautical knowledge areas appropriate to the pilot certificate for the aircraft category and, if applicable, class rating sought;

(3) Must have an endorsement in his or her logbook or training record from an authorized instructor, and that endorsement must attest that the applicant has been found proficient on the areas of operation that are appropriate to the pilot certificate for the aircraft category and, if applicable, class rating sought;

(4) Must pass the required practical test that is appropriate to the pilot certificate for the aircraft category and, if applicable, class rating sought; and

(5) Need not take an additional knowledge test, provided the applicant holds an airplane, rotorcraft, powered-lift, or airship rating at that pilot certificate level.

(c) *Additional class rating.* Any person who applies for an additional class rating to be added on a pilot certificate:

(1) Must have an endorsement in his or her logbook or training record from an authorized instructor and that endorsement must attest that the applicant has been found competent in the aeronautical knowledge areas appropriate to the pilot certificate for the aircraft class rating sought;

(2) Must have an endorsement in his or her logbook or training record from an authorized instructor, and that endorsement must attest that the applicant has been found proficient in the areas of operation appropriate to the pilot certificate for the aircraft class rating sought;

(3) Must pass the required practical test that is appropriate to the pilot certificate for the aircraft class rating sought;

(4) Need not meet the specified training time requirements prescribed by this part that apply to the pilot certificate for the aircraft class rating sought; and

(5) Need not take an additional knowledge test, provided the applicant holds an airplane, rotorcraft, powered-lift, or airship rating at that pilot certificate level.

(d) *Additional type rating.* Except as specified in paragraph (d)(7) of this section, a person who applies for an additional aircraft type rating to be added on a pilot certificate, or the addition of an aircraft type rating that is accomplished concurrently with an additional aircraft category or class rating:

(1) Must hold or concurrently obtain an instrument rating that is appropriate to the aircraft category, class, or type rating sought;

(2) Must have an endorsement in his or her logbook or training record from an authorized instructor, and that endorsement must attest that the applicant has been found competent in the aeronautical knowledge areas appropriate to the pilot certificate for the aircraft category, class, or type rating sought;

(3) Must have an endorsement in his or her logbook, or training record from an authorized instructor, and that endorsement must attest that the applicant has been found proficient in the areas of operation required for the issuance of an airline transport pilot certificate for the aircraft category, class, and type rating sought;

(4) Must pass the required practical test appropriate to the airline transport pilot certificate for the aircraft category, class, and type rating sought;

(5) Must perform the practical test under instrument flight rules, unless the practical test cannot be accomplished under instrument flight rules because the aircraft's type certificate makes the aircraft incapable of operating under instrument flight rules. If the practical test cannot be accomplished for this reason, the person may obtain a type rating limited to ''VFR only.'' The ''VFR only'' limitation may be removed for that aircraft type when the person passes the practical test under instrument flight rules. When an instrument rating is issued to a person who holds one or more type ratings, the type ratings on the amended pilot certificate shall bear the ''VFR only'' limitation for each aircraft type rating for which the person has not demonstrated instrument competency;

(6) Need not take an additional knowledge test, provided the applicant holds an airplane, rotorcraft, powered-lift, or airship rating on their pilot certificate; and

(7) In the case of a pilot employee of a part 121 or a part 135 certificate holder, must have—

(i) Met the appropriate requirements of paragraphs (d)(1), (d)(4), and (d)(5) of this section for the aircraft type rating sought; and

(ii) Received an endorsement in his or her flight training record from the certificate holder attesting that the applicant has completed the certificate holder's approved ground and flight training program appropriate to the aircraft type rating sought.

(e) *Use of an approved flight simulator or an approved flight training device for an additional rating in an airplane.* The areas of operation required to be performed by paragraphs (b), (c), and (d) of this section shall be performed as follows:

(1) Except as provided in paragraph (e)(2) of this section, the areas of operation must be performed in an airplane of the same category, class, and type, if applicable, as the airplane for which the additional rating is sought.

(2) Subject to the limitations of paragraph (e)(3) through (e)(12) of this section, the areas of operation may be performed in an approved flight simulator or an approved flight training device that represents the airplane for which the additional rating is sought.

(3) The use of an approved flight simulator or an approved flight training device permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter.

(4) To complete all training and testing (except preflight inspection) for an additional airplane rating without limitations when using a flight simulator—

(i) The flight simulator must be approved as Level C or Level D; and

(ii) The applicant must meet at least one of the following:

(A) Hold a type rating for a turbojet airplane of the same class of airplane for which the type rating is sought, or have been appointed by a military service as a pilot in command of an airplane of the same class of airplane for which the type rating is sought, if a type rating in a turbojet airplane is sought.

(B) Hold a type rating for a turbopropeller airplane of the same class of airplane for which the type rating is sought, or have been designated by a military service as a pilot in command of an airplane of the same class of airplane for which the type rating is sought, if a type rating in a turbopropeller airplane is sought.

(C) Have at least 2,000 hours of flight time, of which 500 hours is in turbine-powered airplanes of the same class of airplane for which the type rating is sought.

(D) Have at least 500 hours of flight time in the same type airplane as the airplane for which the rating is sought.

(E) Have at least 1,000 hours of flight time in at least two different airplanes requiring a type rating.

(5) Subject to the limitation of paragraph (e)(6) of this section, an applicant who does not meet the requirements of paragraph (e)(4) of this section may complete all training and testing (except for preflight inspection) for an additional rating when using a flight simulator if—

(i) The flight simulator is approved as a Level C or Level D; and

(ii) The applicant meets at least one of the following:

(A) Holds a type rating in a propeller-driven airplane if a type rating in a turbojet airplane is sought, or holds a type rating in a turbojet airplane if a type rating in a propeller-driven airplane is sought; or

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for an additional airplane rating, has logged:

(*1*) At least 100 hours of flight time in airplanes of the same class for which the type rating is sought and which requires a type rating; and

(*2*) At least 25 hours of flight time in airplanes of the same type for which the rating is sought.

(6) An applicant meeting only the requirements of paragraph (e)(5) of this section will be issued an additional rating with a limitation.

(7) The limitation on a certificate issued under the provisions of paragraph (e)(6) of this section shall state, ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(8) An applicant who has been issued a pilot certificate with the limitation specified in paragraph (e)(7) of this section—

(i) May not act as pilot in command of that airplane for which the additional rating was obtained under the provisions of this section until the limitation is removed from the pilot certificate; and

(ii) May have the limitation removed by accomplishing 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in the same type of airplane to which the limitation applies.

(9) An applicant who does not meet the requirements of paragraph (e)(4) or paragraph (e)(5) of this section may be issued an additional rating after successful completion of one of the following requirements:

(i) Compliance with paragraphs (e)(2) and (e)(3) of this section and the following tasks, which must be successfully completed on a static airplane or in flight, as appropriate:

(A) Preflight inspection;

(B) Normal takeoff;

(C) Normal ILS approach;

(D) Missed approach; and

(E) Normal landing.

(ii) Compliance with paragraphs (e)(2), (e)(3), and (e)(10) through (e)(12) of this section.

(10) An applicant meeting only the requirements of paragraph (e)(9) of this section will be issued an additional rating with a limitation.

(11) The limitation on a certificate issued under the provisions of paragraph (e)(10) of this section shall state, ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(12) An applicant who has been issued a pilot certificate with the limitation specified in paragraph (e)(11) of this section—

(i) May not act as pilot in command of that airplane for which the additional rating was obtained under the provisions of this section until the limitation is removed from the pilot certificate; and

(ii) May have the limitation removed by accomplishing 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in that airplane of the same type to which the limitation applies.

(f) *Use of an approved flight simulator or an approved flight training device for an additional rating in a helicopter.* The areas of operation required to be performed by paragraphs (b), (c), and (d) of this section shall be performed as follows:

(1) Except as provided in paragraph (f)(2) of this section, the areas of operation must be performed in a helicopter of the same type for the additional rating sought.

(2) Subject to the limitations of paragraph (f)(3) through (f)(12) of this section, the areas of operation may be performed in an approved flight simulator or an approved flight training device that represents that helicopter for the additional rating sought.

(3) The use of an approved flight simulator or an approved flight training device permitted by paragraph (f)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter.

(4) To complete all training and testing (except preflight inspection) for an additional helicopter rating without limitations when using a flight simulator—

(i) The flight simulator must be approved as Level C or Level D; and

(ii) The applicant must meet at least one of the following if a type rating is sought in a turbine-powered helicopter:

(A) Hold a type rating in a turbine-powered helicopter or have been appointed by a military service as a pilot in command of a turbine-powered helicopter.

(B) Have at least 2,000 hours of flight time that includes at least 500 hours in turbine-powered helicopters.

(C) Have at least 500 hours of flight time in turbine-powered helicopters.

(D) Have at least 1,000 hours of flight time in at least two different turbine-powered helicopters.

(5) Subject to the limitation of paragraph (f)(6) of this section, an applicant who does not meet the requirements of paragraph (f)(4) of this section may complete all training and testing (except for preflight inspection) for an additional rating when using a flight simulator if—

(i) The flight simulator is approved as Level C or Level D; and

(ii) The applicant meets at least one of the following:

(A) Holds a type rating in a turbine-powered helicopter if a type rating in a turbine-powered helicopter is sought; or

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for an additional helicopter rating, has logged at least 25 hours of flight time in helicopters of the same type for which the rating is sought.

(6) An applicant meeting only the requirements of paragraph (f)(5) of this section will be issued an additional rating with a limitation.

(7) The limitation on a certificate issued under the provisions of paragraph (f)(6) of this section shall state, ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(8) An applicant who is issued a pilot certificate with the limitation specified in paragraph (f)(7) of this section—

(i) May not act as pilot in command of that helicopter for which the additional rating was obtained under the provisions of this section until the limitation is removed from the pilot certificate; and

(ii) May have the limitation removed by accomplishing 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in the same type of helicopter to which the limitation applies.

(9) An applicant who does not meet the requirements of paragraph (f)(4) or paragraph (f)(5) of this section may be issued an additional rating after successful completion of one of the following requirements:

(i) Compliance with paragraphs (f)(2) and (f)(3) of this section and the following tasks, which must be successfully completed on a static helicopter or in flight, as appropriate:

(A) Preflight inspection;

(B) Normal takeoff;

(C) Normal ILS approach;

(D) Missed approach; and

(E) Normal landing.

(ii) Compliance with paragraphs (f)(2), (f)(3), and (f)(10) through (f)(12) of this section.

(10) An applicant meeting only the requirements of paragraph (f)(9) of this section will be issued an additional rating with a limitation.

(11) The limitation on a certificate issued under the provisions of paragraph (f)(10) of this section shall state, ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(12) An applicant who has been issued a pilot certificate with the limitation specified in paragraph (f)(11) of this section—

(i) May not act as pilot in command of that helicopter for which the additional rating was obtained under the provisions of this section until the limitation is removed from the pilot certificate; and

(ii) May have the limitation removed by accomplishing 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in that helicopter of the same type as to which the limitation applies.

(g) *Use of an approved flight simulator or an approved flight training device for an additional rating in a powered-lift.* The areas of operation required to be performed by paragraphs (b), (c), and (d) of this section shall be performed as follows:

(1) Except as provided in paragraph (g)(2) of this section, the areas of operation must be performed in a powered-lift of the same type for the additional rating sought.

(2) Subject to the limitations of paragraph (g)(3) through (g)(12) of this section, the areas of operation may be performed in an approved flight simulator or an approved flight training device that represents that powered-lift for the additional rating sought.

(3) The use of an approved flight simulator or an approved flight training device permitted by paragraph (g)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter.

(4) To complete all training and testing (except preflight inspection) for an additional powered-lift rating without limitations when using a flight simulator—

(i) The flight simulator must be approved as Level C or Level D; and

(ii) The applicant must meet at least one of the following if a type rating is sought in a turbine powered-lift:

(A) Hold a type rating in a turbine powered-lift or have been appointed by a military service as a pilot in command of a turbine powered-lift.

(B) Have at least 2,000 hours of flight time that includes at least 500 hours in turbine powered-lifts.

(C) Have at least 500 hours of flight time in turbine powered-lifts.

(D) Have at least 1,000 hours of flight time in at least two different turbine powered-lifts.

(5) Subject to the limitation of paragraph (g)(6) of this section, an applicant who does not meet the requirements of paragraph (g)(4) of this section may complete all training and testing (except for preflight inspection) for an additional rating when using a flight simulator if—

(i) The flight simulator is approved as Level C or Level D; and

(ii) The applicant meets at least one of the following:

(A) Holds a type rating in a turbine powered-lift if a type rating in a turbine powered-lift is sought; or

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for an additional powered-lift rating, has logged at least 25 hours of flight time in powered-lifts of the same type for which the rating is sought.

(6) An applicant meeting only the requirements of paragraph (g)(5) of this section will be issued an additional rating with a limitation.

(7) The limitation on a certificate issued under the provisions of paragraph (g)(6) of this section shall state, ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(8) An applicant who is issued a pilot certificate with the limitation specified in paragraph (g)(7) of this section—

(i) May not act as pilot in command of that powered-lift for which the additional rating was obtained under the provisions of this section until the limitation is removed from the pilot certificate; and

(ii) May have the limitation removed by accomplishing 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in the same type of powered-lift to which the limitation applies.

(9) An applicant who does not meet the requirements of paragraph (g)(4) or paragraph (g)(5) of this section may be issued an additional rating after successful completion of one of the following requirements:

(i) Compliance with paragraphs (g)(2) and (g)(3) of this section and the following tasks, which must be successfully completed on a static powered-lift or in flight, as appropriate:

(A) Preflight inspection;

(B) Normal takeoff;

(C) Normal ILS approach;

(D) Missed approach; and

(E) Normal landing.

(ii) Compliance with paragraphs (g)(2), (g)(3), and (g)(10) through (g)(12) of this section.

(10) An applicant meeting only the requirements of paragraph (g)(9) of this section will be issued an additional rating with a limitation.

(11) The limitation on a certificate issued under the provisions of paragraph (g)(10) of this section shall state, ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(12) An applicant who has been issued a pilot certificate with the limitation specified in paragraph (g)(11) of this section—

(i) May not act as pilot in command of that powered-lift for which the additional rating was obtained under the provisions of this section until the limitation is removed from the pilot certificate; and

(ii) May have the limitation removed by accomplishing 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in that powered-lift of the same type as to which the limitation applies.

(h) An applicant for a type rating who provides an aircraft not capable of the instrument maneuvers and procedures required by the appropriate requirements contained in § 61.157 of this part for the practical test may—

(1) Obtain a type rating limited to ''VFR only''; and

(2) Remove the ''VFR only'' limitation for each aircraft type in which the applicant demonstrates compliance with the appropriate instrument requirements contained in § 61.157 or § 61.73 of this part.

(i) An applicant for a type rating may be issued a certificate with the limitation ''VFR only'' for each aircraft type not equipped for the applicant to show instrument proficiency.

(j) An applicant for a type rating in a multiengine, single-pilot station airplane may meet the requirements of this part in a multiseat version of that multiengine airplane.

(k) An applicant for a type rating in a single-engine, single-pilot station airplane may meet the requirements of this part in a multiseat version of that single-engine airplane.

(l) Unless the Administrator requires certain or all tasks to be performed, the examiner who conducts the practical test may waive any of the tasks for which the Administrator approves waiver authority.

§ 61.64 [Reserved]

§ 61.65 Instrument rating requirements.

(a) *General.* A person who applies for an instrument rating must:

(1) Hold at least a current private pilot certificate with an aircraft category and class rating that applies to the instrument rating sought;

(2) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet any of these requirements due to a medical condition, the Administrator may place such operating limitations on the applicant's pilot certificate as are necessary for the safe operation of the aircraft;

(3) Receive and log ground training from an authorized instructor or accomplish a home-study course of training on the aeronautical knowledge areas of paragraph (b) of this section that apply to the instrument rating sought;

(4) Receive a logbook or training record endorsement from an authorized instructor certifying that the person is prepared to take the required knowledge test;

(5) Receive and log training on the areas of operation of paragraph (c) of this section from an authorized instructor in an aircraft, approved flight simulator, or approved training device that represents that class of aircraft for the instrument rating sought;

(6) Receive a logbook or training record endorsement from an authorized instructor certifying that the person is prepared to take the required practical test;

(7) Pass the required knowledge test on the aeronautical knowledge areas of paragraph (b) of this section; however, an applicant is not required to take another knowledge test when that person already holds an instrument rating; and

(8) Pass the required practical test on the areas of operation in paragraph (c) of this section in—

(i) The aircraft category, class, and type, if applicable, appropriate to the rating sought; or

(ii) A flight simulator or a flight training device appropriate to the rating sought and approved for the specific maneuver or procedure performed. If an approved flight training device is used for the practical test, the procedures conducted in that flight training device are limited to one precision and one nonprecision approach, provided the flight training device is approved for the procedure performed.

(b) *Aeronautical knowledge.* A person who applies for an instrument rating must have received and logged ground training from an authorized instructor or accomplished a home-study course on the following aeronautical knowledge areas that apply to the instrument rating sought:

(1) Federal Aviation Regulations of this chapter that apply to flight operations under IFR;

(2) Appropriate information that applies to flight operations under IFR in the ''Aeronautical Information Manual;''

(3) Air traffic control system and procedures for instrument flight operations;

(4) IFR navigation and approaches by use of navigation systems;

(5) Use of IFR en route and instrument approach procedure charts;

(6) Procurement and use of aviation weather reports and forecasts and the elements of forecasting weather trends based on that information and personal observation of weather conditions;

(7) Safe and efficient operation of aircraft under instrument flight rules and conditions;

(8) Recognition of critical weather situations and windshear avoidance;

(9) Aeronautical decision making and judgment; and

(10) Crew resource management, including crew communication and coordination.

(c) *Flight proficiency.* A person who applies for an instrument rating must receive and log training from an authorized instructor in an aircraft, or in an approved flight simulator or approved flight training device, in accordance with paragraph (e) of this section, that includes the following areas of operation:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Air traffic control clearances and procedures;

(4) Flight by reference to instruments;

(5) Navigation systems;

(6) Instrument approach procedures;

(7) Emergency operations; and

(8) Postflight procedures.

(d) *Aeronautical experience.* A person who applies for an instrument rating must have logged the following:

(1) At least 50 hours of cross-country flight time as pilot in command, of which at least 10 hours must be in airplanes for an instrument—airplane rating; and

(2) A total of 40 hours of actual or simulated instrument time on the areas of operation of this section, to include—

(i) At least 15 hours of instrument flight training from an authorized instructor in the aircraft category for which the instrument rating is sought;

(ii) At least 3 hours of instrument training that is appropriate to the instrument rating sought from an authorized instructor in preparation for the practical test within the 60 days preceding the date of the test;

(iii) For an instrument—airplane rating, instrument training on cross-

country flight procedures specific to airplanes that includes at least one cross-country flight in an airplane that is performed under IFR, and consists of—

(A) A distance of at least 250 nautical miles along airways or ATC-directed routing;

(B) An instrument approach at each airport; and

(C) Three different kinds of approaches with the use of navigation systems;

(iv) For an instrument—helicopter rating, instrument training specific to helicopters on cross-country flight procedures that includes at least one cross-country flight in a helicopter that is performed under IFR, and consists of—

(A) A distance of at least 100 nautical miles along airways or ATC-directed routing;

(B) An instrument approach at each airport; and

(C) Three different kinds of approaches with the use of navigation systems; and

(v) For an instrument—powered-lift rating, instrument training specific to a powered-lift on cross-country flight procedures that includes at least one cross-country flight in a powered-lift that is performed under IFR and consists of—

(A) A distance of at least 250 nautical miles along airways or ATC-directed routing;

(B) An instrument approach at each airport; and

(C) Three different kinds of approaches with the use of navigation systems.

(e) *Use of approved flight simulators or approved flight training devices.* If the instrument training was provided by an authorized instructor in an approved flight simulator or an approved flight training device—

(1) A maximum of 30 hours may be performed in that approved flight simulator or approved flight training device if the training was accomplished in accordance with part 142 of this chapter; or

(2) A maximum of 20 hours may be performed in that approved flight simulator or approved flight training device if the training was not accomplished in accordance with part 142 of this chapter.

§ 61.67 Category II pilot authorization requirements.

(a) *General.* A person who applies for a Category II pilot authorization must hold:

(1) At least a private or commercial pilot certificate with an instrument rating or an airline transport pilot certificate;

(2) A type rating for the aircraft for which the authorization is sought if that aircraft requires a type rating; and

(3) A category and class rating for the aircraft for which the authorization is sought.

(b) *Experience requirements.* An applicant for a Category II pilot authorization must have at least—

(1) 50 hours of night flight time as pilot in command.

(2) 75 hours of instrument time under actual or simulated instrument conditions that may include not more than—

(i) A combination of 25 hours of simulated instrument flight time in an approved flight simulator or an approved flight training device; or

(ii) 40 hours of simulated instrument flight time if accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

(3) 250 hours of cross-country flight time as pilot in command.

(c) *Practical test requirements.* (1) A practical test must be passed by a person who applies for—

(i) Issuance or renewal of a Category II pilot authorization; and

(ii) The addition of another type aircraft to the applicant's Category II pilot authorization.

(2) To be eligible for the practical test for an authorization under this section, an applicant must—

(i) Meet the requirements of paragraphs (a) and (b) of this section; and

(ii) If the applicant has not passed a practical test for this authorization during the 12 calendar months preceding the month of the test, then that person must—

(A) Meet the requirements of § 61.57(c); and

(B) Have performed at least six ILS approaches during the 6 calendar months preceding the month of the test, of which at least three of the approaches must have been conducted without the use of an approach coupler.

(3) The approaches specified in paragraph (c)(2)(ii)(B) of this section—

(i) Must be conducted under actual or simulated instrument flight conditions;

(ii) Must be conducted to the minimum decision height for the ILS approach in the type aircraft in which the practical test is to be conducted;

(iii) Need not be conducted to the decision height authorized for Category II operations;

(iv) Must be conducted to the decision height authorized for Category II operations only if conducted in an approved flight simulator or an approved flight training device; and

(v) Must be accomplished in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted or in an approved flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(4) The flight time acquired in meeting the requirements of paragraph (c)(2)(ii)(B) of this section may be used to meet the requirements of paragraph (c)(2)(ii)(A) of this section.

(d) *Practical test procedures.* The practical test consists of an oral increment and a flight increment.

(1) *Oral increment.* In the oral increment of the practical test an applicant must demonstrate knowledge of the following:

(i) Required landing distance;

(ii) Recognition of the decision height;

(iii) Missed approach procedures and techniques using computed or fixed attitude guidance displays;

(iv) Use and limitations of RVR;

(v) Use of visual clues, their availability or limitations, and altitude at which they are normally discernible at reduced RVR readings;

(vi) Procedures and techniques related to transition from nonvisual to visual flight during a final approach under reduced RVR;

(vii) Effects of vertical and horizontal windshear;

(viii) Characteristics and limitations of the ILS and runway lighting system;

(ix) Characteristics and limitations of the flight director system, auto approach coupler (including split axis type if equipped), auto throttle system (if equipped), and other required Category II equipment;

(x) Assigned duties of the second in command during Category II approaches, unless the aircraft for which authorization is sought does not require a second in command; and

(xi) Instrument and equipment failure warning systems.

(2) *Flight increment.* The following requirements apply to the flight increment of the practical test:

(i) The flight increment must be conducted in an aircraft of the same category, class, and type, as applicable, as the aircraft in which the authorization is sought or in an approved flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(ii) The flight increment must consist of at least two ILS approaches to 100 feet AGL including at least one landing and one missed approach.

(iii) All approaches performed during the flight increment must be made with the use of an approved flight control guidance system, except if an approved auto approach coupler is installed, at least one approach must be hand flown using flight director commands.

(iv) If a multiengine airplane with the performance capability to execute a missed approach with one engine inoperative is used for the practical test, the flight increment must include the performance of one missed approach with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle marker.

(v) If an approved multiengine flight simulator or approved multiengine flight training device is used for the practical test, the applicant must execute a missed approach with the most critical engine, if applicable, failed.

(vi) For an authorization for an aircraft that requires a type rating, the practical test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

(vii) Oral questioning may be conducted at any time during a practical test.

§ 61.68 Category III pilot authorization requirements.

(a) *General.* A person who applies for a Category III pilot authorization must hold:

(1) At least a private pilot certificate or commercial pilot certificate with an instrument rating or an airline transport pilot certificate;

(2) A type rating for the aircraft for which the authorization is sought if that aircraft requires a type rating; and

(3) A category and class rating for the aircraft for which the authorization is sought.

(b) *Experience requirements.* An applicant for a Category III pilot authorization must have at least—

(1) 50 hours of night flight time as pilot in command.

(2) 75 hours of instrument flight time during actual or simulated instrument conditions that may include not more than—

(i) A combination of 25 hours of simulated instrument flight time in an approved flight simulator or an approved flight training device; or

(ii) 40 hours of simulated instrument flight time if accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

(3) 250 hours of cross-country flight time as pilot in command.

(c) *Practical test requirements.* (1) A practical test must be passed by a person who applies for—

(i) Issuance or renewal of a Category III pilot authorization; and

(ii) The addition of another type of aircraft to the applicant's Category III pilot authorization.

(2) To be eligible for the practical test for an authorization under this section, an applicant must—

(i) Meet the requirements of paragraphs (a) and (b) of this section; and

(ii) If the applicant has not passed a practical test for this authorization during the 12 calendar months preceding the month of the test, then that person must—

(A) Meet the requirements of § 61.57(c); and

(B) Have performed at least six ILS approaches during the 6 calendar months preceding the month of the test, of which at least three of the approaches must have been conducted without the use of an approach coupler.

(3) The approaches specified in paragraph (c)(2)(ii)(B) of this section—

(i) Must be conducted under actual or simulated instrument flight conditions;

(ii) Must be conducted to the alert height or decision height for the ILS approach in the type aircraft in which the practical test is to be conducted;

(iii) Need not be conducted to the decision height authorized for Category III operations;

(iv) Must be conducted to the alert height or decision height, as applicable, authorized for Category III operations only if conducted in an approved flight simulator or approved flight training device; and

(v) Must be accomplished in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted or in an approved flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft for which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(4) The flight time acquired in meeting the requirements of paragraph (c)(2)(ii)(B) of this section may be used to meet the requirements of paragraph (c)(2)(ii)(A) of this section.

(d) *Practical test procedures.* The practical test consists of an oral increment and a flight increment.

(1) *Oral increment.* In the oral increment of the practical test an applicant must demonstrate knowledge of the following:

(i) Required landing distance;

(ii) Determination and recognition of the alert height or decision height, as applicable, including use of a radar altimeter;

(iii) Recognition of and proper reaction to significant failures encountered prior to and after reaching the alert height or decision height, as applicable;

(iv) Missed approach procedures and techniques using computed or fixed attitude guidance displays and expected height loss as they relate to manual go-around or automatic go-around, and initiation altitude, as applicable;

(v) Use and limitations of RVR, including determination of controlling RVR and required transmissometers;

(vi) Use, availability, or limitations of visual cues and the altitude at which they are normally discernible at reduced RVR readings including—

(A) Unexpected deterioration of conditions to less than minimum RVR during approach, flare, and rollout;

(B) Demonstration of expected visual references with weather at minimum conditions;

(C) The expected sequence of visual cues during an approach in which visibility is at or above landing minima; and

(D) Procedures and techniques for making a transition from instrument reference flight to visual flight during a final approach under reduced RVR.

(vii) Effects of vertical and horizontal windshear;

(viii) Characteristics and limitations of the ILS and runway lighting system;

(ix) Characteristics and limitations of the flight director system auto approach coupler (including split axis type if equipped), auto throttle system (if equipped), and other Category III equipment;

(x) Assigned duties of the second in command during Category III operations, unless the aircraft for which authorization is sought does not require a second in command;

(xi) Recognition of the limits of acceptable aircraft position and flight path tracking during approach, flare, and, if applicable, rollout; and

(xii) Recognition of, and reaction to, airborne or ground system faults or

abnormalities, particularly after passing alert height or decision height, as applicable.

(2) *Flight increment.* The following requirements apply to the flight increment of the practical test—

(i) The flight increment may be conducted in an aircraft of the same category and class, and type, as applicable, as the aircraft for which the authorization is sought, or in an approved flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(ii) The flight increment must consist of at least two ILS approaches to 100 feet AGL, including one landing and one missed approach initiated from a very low altitude that may result in a touchdown during the go-around maneuver;

(iii) All approaches performed during the flight increment must be made with the approved automatic landing system or an equivalent landing system approved by the Administrator;

(iv) If a multiengine aircraft with the performance capability to execute a missed approach with one engine inoperative is used for the practical test, the flight increment must include the performance of one missed approach with the most critical engine, if applicable, set at idle or zero thrust before reaching the middle or outer marker;

(v) If an approved multiengine flight simulator or approved multiengine flight training device is used, a missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed;

(vi) For an authorization for an aircraft that requires a type rating, the practical test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought;

(vii) Oral questioning may be conducted at any time during the practical test;

(viii) Subject to the limitations of this paragraph, for Category IIIb operations predicated on the use of a fail-passive rollout control system, at least one manual rollout using visual reference or a combination of visual and instrument references must be executed. The maneuver required by this paragraph shall be initiated by a fail-passive disconnect of the rollout control system—

(A) After main gear touchdown;

(B) Prior to nose gear touchdown;

(C) In conditions representative of the most adverse lateral touchdown displacement allowing a safe landing on the runway; and

(D) In weather conditions anticipated in Category IIIb operations.

§ 61.69 Glider towing: Experience and training requirements.

(a) No person may act as pilot in command for towing a glider unless that person:

(1) Holds at least a private pilot certificate with a category rating for powered aircraft;

(2) Has logged at least 100 hours of pilot-in-command time in the aircraft category, class, and type, if required, that the pilot is using to tow a glider;

(3) Has a logbook endorsement from an authorized instructor with a glider rating who certifies that the person has received ground and flight training in gliders and is proficient in—

(i) The techniques and procedures essential to the safe towing of gliders, including airspeed limitations;

(ii) Emergency procedures;

(iii) Signals used; and

(iv) Maximum angles of bank.

(4) Except as provided in paragraph (b) of this section, has logged at least three flights as the sole manipulator of the controls of an aircraft towing a glider or simulating glider-towing flight procedures while accompanied by a pilot who meets the requirements of this section;

(5) Except as provided in paragraph (b) of this section, has received a logbook endorsement from the pilot, described in paragraph (a)(4) of this section, certifying that the person has accomplished at least 3 flights in an aircraft while towing a glider, or while simulating glider-towing flight procedures; and

(6) Within the preceding 12 months has—

(i) Made at least three actual glider tows while accompanied by a qualified pilot who meets the requirements of this section; or

(ii) Made at least three flights as pilot in command of a glider towed by an aircraft.

(b) Any person who before May 17, 1967, has made and logged 10 or more flights as pilot in command of an aircraft towing a glider in accordance with a certificate of waiver need not comply with paragraphs (a)(4) and (a)(5) of this section.

(c) The pilot, described in paragraph (a)(4) of this section, who endorses the logbook of a person seeking glider-towing privileges must have:

(1) Met the requirements of this section prior to endorsing the logbook of the person seeking glider-towing privileges; and

(2) Logged at least 10 flights as pilot in command of an aircraft while towing a glider.

(d) If the pilot described in paragraph (a)(4) of this section holds only a private pilot certificate, then that pilot must have:

(1) Logged at least 100 hours of pilot-in-command time in airplanes, or 200 hours of pilot-in-command time in a combination of powered and other-than-powered aircraft; and

(2) Performed and logged at least three flights within the 12 calendar months preceding the month that pilot accompanies or endorses the logbook of a person seeking glider-towing privileges—

(i) In an aircraft while towing a glider accompanied by another pilot who meets the requirements of this section; or

(ii) As pilot in command of a glider being towed by an aircraft.

§ 61.71 Graduates of an approved training program other than under this part: Special rules.

(a) A person who graduates from an approved training program under part 141 or part 142 of this chapter is considered to have met the applicable aeronautical experience, aeronautical knowledge, and areas of operation requirements of this part if that person presents the graduation certificate and passes the required practical test within the 60-day period after the date of graduation.

(b) A person may apply for an airline transport pilot certificate, type rating, or both under this part, and will be considered to have met the applicable requirements under § 61.157 of this part for that certificate and rating, if that person has:

(1) Satisfactorily accomplished an approved training program and the pilot in command proficiency check for that airplane type, in accordance with the pilot in command requirements under subparts N and O of part 121 of this chapter; and

(2) Applied for the airline transport pilot certificate, type rating, or both within the 60-day period from the date the person satisfactorily accomplished the approved training program and pilot in command proficiency check for that airplane type.

§ 61.73 Military pilots or former military pilots: Special rules.

(a) *General.* Except for a rated military pilot or former rated military pilot who has been removed from flying status for lack of proficiency, or because of

disciplinary action involving aircraft operations, a rated military pilot or former rated military pilot who meets the applicable requirements of this section may apply, on the basis of his or her military training, for:

(1) A commercial pilot certificate;

(2) An aircraft rating in the category and class of aircraft for which that military pilot is qualified;

(3) An instrument rating with the appropriate aircraft rating for which that military pilot is qualified; or

(4) A type rating, if appropriate.

(b) *Military pilots on active flying status within the past 12 months.* A rated military pilot or former rated military pilot who has been on active flying status within the 12 months before applying must:

(1) Pass a knowledge test on the appropriate parts of this chapter that apply to pilot privileges and limitations, air traffic and general operating rules, and accident reporting rules;

(2) Present documentation showing compliance with the requirements of paragraph (d) of this section for at least one aircraft category rating; and

(3) Present documentation showing that the applicant is or was, at any time during the 12 calendar months before the month of application—

(i) A rated military pilot on active flying status in an armed force of the United States; or

(ii) A rated military pilot of an armed force of a foreign contracting State to the Convention on International Civil Aviation, assigned to pilot duties (other than flight training) with an armed force of the United States and holds, at the time of application, a current civil pilot license issued by that contracting State authorizing at least the privileges of the pilot certificate sought.

(c) *Military pilots not on active flying status during the 12 calendar months before the month of application.* A rated military pilot or former rated military pilot who has not been on active flying status within the 12 calendar months before the month of application must:

(1) Pass the appropriate knowledge and practical tests prescribed in this part for the certificate or rating sought; and

(2) Present documentation showing that the applicant was or is, within the 12 calendar months before the month of application, a rated military pilot as prescribed by paragraph (b)(3) of this section.

(d) *Aircraft category, class, and type ratings.* A rated military pilot or former rated military pilot who applies for an aircraft category, class, or type rating, if applicable, is issued that rating at the commercial pilot certificate level if the pilot presents documentary evidence that shows satisfactory accomplishment of:

(1) An official U.S. military pilot check and instrument proficiency check in that aircraft category, class, or type, if applicable, as pilot in command during the 12 calendar months before the month of application;

(2) At least 10 hours of pilot-in-command time in that aircraft category, class, or type, if applicable, during the 12 calendar months before the month of application; or

(3) An FAA practical test in that aircraft after—

(i) Meeting the requirements of paragraphs (b)(1) and (b)(2) of this section; and

(ii) Having received an endorsement from an authorized instructor who certifies that the pilot is proficient to take the required practical test, and that endorsement is made within the 60-day period preceding the date of the practical test.

(e) *Instrument rating.* A rated military pilot or former rated military pilot who applies for an airplane instrument rating, a helicopter instrument rating, or a powered-lift instrument rating to be added to his or her commercial pilot certificate may apply for an instrument rating if the pilot has, within the 12 calendar months preceding the month of application:

(1) Passed an instrument proficiency check by a U.S. Armed Force in the aircraft category for the instrument rating sought; and

(2) Received authorization from a U.S. Armed Force to conduct IFR flights on Federal airways in that aircraft category and class for the instrument rating sought.

(f) *Aircraft type rating.* An aircraft type rating is issued only for aircraft types that the Administrator has certificated for civil operations.

(g) *Aircraft type rating placed on an airline transport pilot certificate.* A rated military pilot or former rated military pilot who holds an airline transport pilot certificate and who requests an aircraft type rating to be placed on that person's airline transport pilot certificate may be issued that aircraft type rating at the airline transport pilot certificate level, provided that person:

(1) Holds a category and class rating for that type of aircraft at the airline transport pilot certificate level; and

(2) Passed an official U.S. military pilot check and instrument proficiency check in that type of aircraft as pilot in command during the 12 calendar months before the month of application.

(h) *Evidentiary documents.* The following documents are satisfactory evidence for the purposes indicated:

(1) An official identification card issued to the pilot by an armed force may be used to demonstrate membership in the armed forces.

(2) An original or a copy of a certificate of discharge or release may be used to demonstrate discharge or release from an armed force or former membership in an armed force.

(3) Current or previous status as a rated military pilot with a U.S. Armed Force may be demonstrated by—

(i) An official U.S. Armed Force order to flight status as a military pilot;

(ii) An official U.S. Armed Force form or logbook showing military pilot status; or

(iii) An official order showing that the rated military pilot graduated from a U.S. military pilot school and received a rating as a military pilot.

(4) A certified U.S. Armed Force logbook or an appropriate official U.S. Armed Force form or summary may be used to demonstrate flight time in military aircraft as a member of a U.S. Armed Force.

(5) An official U.S. Armed Force record of a military checkout as pilot in command may be used to demonstrate pilot in command status.

(6) A current instrument grade slip that is issued by a U.S. Armed Force, or an official record of satisfactory accomplishment of an instrument proficiency check during the 12 calendar months preceding the month of the application may be used to demonstrate instrument pilot qualification.

§ 61.75 Private pilot certificate issued on the basis of a foreign pilot license.

(a) *General.* A person who holds a current foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may apply for and be issued a private pilot certificate with the appropriate ratings when the application is based on the foreign pilot license that meets the requirements of this section.

(b) *Certificate issued.* A U.S. private pilot certificate that is issued under this section shall specify the person's foreign license number and country of issuance. A person who holds a current foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may be issued a private pilot certificate based on the foreign pilot license without any further showing of proficiency, provided the applicant:

(1) Meets the requirements of this section;

(2) Holds a foreign pilot license that—

(i) Is not under an order of revocation or suspension by the foreign country that issued the foreign pilot license; and

(ii) Does not contain an endorsement stating that the applicant has not met all of the standards of ICAO for that license;

(3) Does not currently hold a U.S. pilot certificate;

(4) Holds a current medical certificate issued under part 67 of this chapter or a current medical certificate issued by the country that issued the person's foreign pilot license; and

(5) Is able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft.

(c) *Aircraft ratings issued.* Aircraft ratings listed on a person's foreign pilot license, in addition to any issued after testing under the provisions of this part, may be placed on that person's U.S. pilot certificate.

(d) *Instrument ratings issued.* A person who holds an instrument rating on the foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may be issued an instrument rating on a U.S. private pilot certificate provided:

(1) The person's foreign pilot license authorizes instrument privileges;

(2) Within 24 months preceding the month in which the person applies for the instrument rating, the person passes the appropriate knowledge test; and

(3) The person is able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft.

(e) *Operating privileges and limitations.* A person who receives a U.S. private pilot certificate that has been issued under the provisions of this section:

(1) May act as a pilot of a civil aircraft of U.S. registry in accordance with the private pilot privileges authorized by this part;

(2) Is limited to the privileges placed on the certificate by the Administrator;

(3) Is subject to the limitations and restrictions on the person's U.S. certificate and foreign pilot license when exercising the privileges of that U.S. pilot certificate in an aircraft of U.S. registry operating within or outside the United States; and

(4) Shall not exercise the privileges of that U.S. private pilot certificate when the person's foreign pilot license has been revoked or suspended.

(f) *Limitation on licenses used as the basis for a U.S. certificate.* Only one foreign pilot license may be used as a basis for issuing a U.S. private pilot certificate. The foreign pilot license and medical certification used as a basis for issuing a U.S. private pilot certificate under this section must be in the English language or accompanied by an English language transcription that has been signed by an official or representative of the foreign aviation authority that issued the foreign pilot license.

(g) *Limitation placed on a U.S. private pilot certificate.* A U.S. private pilot certificate issued under this section is valid only when the holder has the foreign pilot license upon which the issuance of the U.S. private pilot certificate was based in the holder's personal possession or readily accessible in the aircraft.

§ 61.77 Special purpose pilot authorization: Operation of U.S.-registered civil aircraft leased by a person who is not a U.S. citizen.

(a) *General.* After meeting the requirements of this section, a holder of a foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may be issued a special purpose pilot authorization by the Administrator for the purpose of performing pilot duties:

(1) On a civil aircraft of U.S. registry that is leased to a person who is not a citizen of the United States; and

(2) For carrying persons or property for compensation or hire on that aircraft.

(b) *Eligibility.* To be eligible for the issuance or renewal of a special purpose pilot authorization, a person must:

(1) Hold a current foreign pilot license that has been issued by the aeronautical authority of a contracting State to the Convention on International Civil Aviation from which the person holds citizenship or resident status;

(2) Hold a foreign pilot license that contains the appropriate aircraft category, class, instrument rating, and type rating, if appropriate, for the aircraft to be flown;

(3) Meet the medical standards for the issuance of the foreign pilot license from the aeronautical authority of the contracting State to the Convention on International Civil Aviation where the person holds citizenship or resident status;

(4) Must not already hold a special purpose pilot authorization, but if the person already holds a special purpose pilot authorization, then that special purpose pilot authorization must either be surrendered to the FAA Flight Standards District Office that issued it, or to the FAA Flight Standards District Office processing the application for the authorization prior to being issued another special purpose pilot authorization;

(5) Meet the currency requirements of this part and present a logbook or flight record showing compliance with the currency requirements of this part;

(6) Show when the person will reach the age of 60 years by providing an official copy of the applicant's birth certificate or other official documentation; and

(7) Present a copy of the foreign pilot license and a letter to an FAA Flight Standards District Office from the lessee of the aircraft that—

(i) Acknowledges the person is employed by the lessee;

(ii) Specifies the aircraft type in which the person will be performing pilot duties; and

(iii) States that the person is currently qualified to exercise the privileges listed on that person's pilot license for the aircraft to be flown, and that the person has satisfactorily accomplished the applicable ground and flight training in the aircraft type in which the person will be performing pilot duties.

(c) *Privileges.* A person issued a special purpose pilot authorization under this section:

(1) May exercise the privileges prescribed on the special purpose pilot authorization; and

(2) Must comply with the limitations specified in this section and any additional limitations specified on the special purpose pilot authorization.

(d) *General limitations.* A person exercising the privileges of a special purpose pilot authorization:

(1) May apply for a 60-calendar-month extension of that authorization, provided the person—

(i) Continues to meet the requirements of this section; and

(ii) Surrenders the expired special purpose pilot authorization upon receipt of the new authorization.

(2) Holds only one special purpose pilot authorization;

(3) Conducts any flight between foreign countries in foreign air commerce within the time period allotted on the authorization; and

(4) Has the foreign pilot license and special purpose pilot authorization in his or her physical possession or immediately accessible in the aircraft, while exercising the privileges of that special purpose pilot authorization.

(e) *Age limitation.* Except as provided in paragraph (g) of this section, no

person who holds a special purpose pilot authorization issued under this part, and no person who holds a special purpose pilot certificate issued under this part before August 4, 1997, shall serve as a pilot on a civil airplane of U.S. registry if the person has reached his or her 60th birthday, in the following operations:

(1) Scheduled international air services carrying passengers in turbojet-powered airplanes;

(2) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat;

(3) Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passenger seats, excluding each crewmember seat; or

(4) Scheduled international air services, or nonscheduled international air transportation for compensation or hire, in airplanes having a payload capacity of more than 7,500 pounds.

(f) *Definitions.* (1) ''International air service,'' as used in paragraph (e) of this section, means scheduled air service performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the air space over the territory of more than one country.

(2) ''International air transportation,'' as used in paragraph (e) of this section, means air transportation performed in airplanes for the public transport of passengers, mail, or cargo, in which service passes through the air space over the territory of more than one country.

(g) *Delayed pilot age limitations for certain operations.* Until December 20, 1999, a person may serve as a pilot in the operations specified in paragraph (e) of this section after that person has reached his or her 60th birthday, if, on March 20, 1997, that person was employed as a pilot in any of these operations:

(1) Scheduled international air services carrying passengers in nontransport category turbopropeller-powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10 to 19 seats;

(2) Scheduled international air services carrying passengers in transport category turbopropeller-powered airplanes that have a passenger seat configuration of 20 to 30 seats; or

(3) Scheduled international air services carrying passengers in turbojet-powered airplanes having a passenger seat configuration of 1 to 30 seats.

(h) *Expiration date.* Each special purpose pilot authorization issued under this section expires:

(1) 60 calendar months from the month it was issued, unless sooner suspended or revoked;

(2) When the lease agreement for the aircraft expires or the lessee terminates the employment of the person who holds the special purpose pilot authorization;

(3) Whenever the person's foreign pilot license has been suspended, revoked, or is no longer valid; or

(4) When the person no longer meets the medical standards for the issuance of the foreign pilot license.

Subpart C—Student Pilots

§ 61.81 Applicability.

This subpart prescribes the requirements for the issuance of student pilot certificates, the conditions under which those certificates are necessary, and the general operating rules and limitations for the holders of those certificates.

§ 61.83 Eligibility requirements for student pilots.

To be eligible for a student pilot certificate, an applicant must:

(a) Be at least 16 years of age for other than the operation of a glider or balloon.

(b) Be at least 14 years of age for the operation of a glider or balloon.

(c) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft.

§ 61.85 Application.

An application for a student pilot certificate is made on a form and in a manner provided by the Administrator and is submitted to:

(a) A designated aviation medical examiner if applying for an FAA medical certificate under part 67 of this chapter;

(b) An examiner; or

(c) A Flight Standards District Office.

§ 61.87 Solo requirements for student pilots.

(a) *General.* A student pilot may not operate an aircraft in solo flight unless that student has met the requirements of this section. The term ''solo flight,'' as used in this subpart, means that flight time during which a student pilot is the sole occupant of the aircraft, or that flight time during which the student acts as a pilot in command of a gas balloon or an airship requiring more than one flight crewmember.

(b) *Aeronautical knowledge.* A student pilot must demonstrate satisfactory aeronautical knowledge on a knowledge test that meets the requirements of this paragraph:

(1) The test must address the student pilot's knowledge of—

(i) Applicable sections of parts 61 and 91 of this chapter;

(ii) Airspace rules and procedures for the airport where the solo flight will be performed; and

(iii) Flight characteristics and operational limitations for the make and model of aircraft to be flown.

(2) The student's authorized instructor must—

(i) Administer the test; and

(ii) At the conclusion of the test, review all incorrect answers with the student before authorizing that student to conduct a solo flight.

(c) *Pre-solo flight training.* Prior to conducting a solo flight, a student pilot must have:

(1) Received and logged flight training for the maneuvers and procedures of this section that are appropriate to the make and model of aircraft to be flown; and

(2) Demonstrated satisfactory proficiency and safety, as judged by an authorized instructor, on the maneuvers and procedures required by this section in the make and model of aircraft or similar make and model of aircraft to be flown.

(d) *Maneuvers and procedures for pre-solo flight training in a single-engine airplane.* A student pilot who is receiving training for a single-engine airplane rating must receive and log flight training for the following maneuvers and procedures:

(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;

(2) Taxiing or surface operations, including runups;

(3) Takeoffs and landings, including normal and crosswind;

(4) Straight and level flight, and turns in both directions;

(5) Climbs and climbing turns;

(6) Airport traffic patterns, including entry and departure procedures;

(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;

(8) Descents, with and without turns, using high and low drag configurations;

(9) Flight at various airspeeds from cruise to slow flight;

(10) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and recovery from a full stall;

(11) Emergency procedures and equipment malfunctions;

(12) Ground reference maneuvers;
(13) Approaches to a landing area with simulated engine malfunctions;
(14) Slips to a landing; and
(15) Go-arounds.

(e) *Maneuvers and procedures for pre-solo flight training in a multiengine airplane.* A student pilot who is receiving training for a multiengine airplane rating must receive and log flight training for the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations, including runups;
(3) Takeoffs and landings, including normal and crosswind;
(4) Straight and level flight, and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns, including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents, with and without turns, using high and low drag configurations;
(9) Flight at various airspeeds from cruise to slow flight;
(10) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and recovery from a full stall;
(11) Emergency procedures and equipment malfunctions;
(12) Ground reference maneuvers;
(13) Approaches to a landing area with simulated engine malfunctions; and
(14) Go-arounds.

(f) *Maneuvers and procedures for pre-solo flight training in a helicopter.* A student pilot who is receiving training for a helicopter rating must receive and log flight training for the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations, including runups;
(3) Takeoffs and landings, including normal and crosswind;
(4) Straight and level flight, and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns, including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to the landing area;
(13) Hovering and hovering turns;
(14) Go-arounds;
(15) Simulated emergency procedures, including autorotational descents with a power recovery and power recovery to a hover;
(16) Rapid decelerations; and
(17) Simulated one-engine-inoperative approaches and landings for multiengine helicopters.

(g) *Maneuvers and procedures for pre-solo flight training in a gyroplane.* A student pilot who is receiving training for a gyroplane rating must receive and log flight training for the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations, including runups;
(3) Takeoffs and landings, including normal and crosswind;
(4) Straight and level flight, and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns, including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Approaches to the landing area;
(13) High rates of descent with power on and with simulated power off, and recovery from those flight configurations;
(14) Go-arounds; and
(15) Simulated emergency procedures, including simulated power-off landings and simulated power failure during departures.

(h) *Maneuvers and procedures for pre-solo flight training in a powered-lift.* A student pilot who is receiving training for a powered-lift rating must receive and log flight training in the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations, including runups;
(3) Takeoffs and landings, including normal and crosswind;
(4) Straight and level flight, and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns, including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds from cruise to slow flight;
(10) Stall entries from various flight attitudes and power combinations with recovery initiated at the first indication of a stall, and recovery from a full stall;
(11) Emergency procedures and equipment malfunctions;
(12) Ground reference maneuvers;
(13) Approaches to a landing with simulated engine malfunctions;
(14) Go-arounds;
(15) Approaches to the landing area;
(16) Hovering and hovering turns; and
(17) For multiengine powered-lifts, simulated one-engine-inoperative approaches and landings.

(i) *Maneuvers and procedures for pre-solo flight training in a glider.* A student pilot who is receiving training for a glider rating must receive and log flight training for the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning, preparation, aircraft systems, and, if appropriate, powerplant operations;
(2) Taxiing or surface operations, including runups, if applicable;
(3) Launches, including normal and crosswind;
(4) Straight and level flight, and turns in both directions;
(5) Airport traffic patterns, including entry procedures;
(6) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(7) Descents with and without turns using high and low drag configurations;
(8) Flight at various airspeeds;
(9) Emergency procedures and equipment malfunctions;
(10) Ground reference maneuvers;
(11) Inspection of towline rigging and review of signals and release procedures;
(12) Aerotow, ground tow, or self-launch procedures;
(13) Procedures for disassembly and assembly of the glider;
(14) Stall entry, stall, and stall recovery;
(15) Straight glides, turns, and spirals;
(16) Landings, including normal and crosswind;
(17) Slips to a landing;
(18) Procedures and techniques for thermalling; and
(19) Emergency operations, including towline break procedures.

(j) *Maneuvers and procedures for pre-solo flight training in an airship.* A student pilot who is receiving training for an airship rating must receive and log flight training for the following maneuvers and procedures:

(1) Proper flight preparation procedures, including preflight planning and preparation, powerplant operation, and aircraft systems;
(2) Taxiing or surface operations, including runups;
(3) Takeoffs and landings, including normal and crosswind;
(4) Straight and level flight, and turns in both directions;
(5) Climbs and climbing turns;
(6) Airport traffic patterns, including entry and departure procedures;
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance;
(8) Descents with and without turns;
(9) Flight at various airspeeds from cruise to slow flight;
(10) Emergency procedures and equipment malfunctions;
(11) Ground reference maneuvers;
(12) Rigging, ballasting, and controlling pressure in the ballonets, and superheating; and
(13) Landings with positive and with negative static trim.

(k) *Maneuvers and procedures for pre-solo flight training in a balloon.* A student pilot who is receiving training in a balloon must receive and log flight training for the following maneuvers and procedures:
(1) Layout and assembly procedures;
(2) Proper flight preparation procedures, including preflight planning and preparation, and aircraft systems;
(3) Ascents and descents;
(4) Landing and recovery procedures;
(5) Emergency procedures and equipment malfunctions;
(6) Operation of hot air or gas source, ballast, valves, vents, and rip panels, as appropriate;
(7) Use of deflation valves or rip panels for simulating an emergency;
(8) The effects of wind on climb and approach angles; and
(9) Obstruction detection and avoidance techniques.

(l) *Limitations on student pilots operating an aircraft in solo flight.* A student pilot may not operate an aircraft in solo flight unless that student pilot has received:
(1) An endorsement from an authorized instructor on his or her student pilot certificate for the specific make and model aircraft to be flown; and
(2) An endorsement in the student's logbook for the specific make and model aircraft to be flown by an authorized instructor, who gave the training within the 90 days preceding the date of the flight.

(m) *Limitations on student pilots operating an aircraft in solo flight at night.* A student pilot may not operate an aircraft in solo flight at night unless that student pilot has received:
(1) Flight training at night on night flying procedures that includes takeoffs, approaches, landings, and go-arounds at night at the airport where the solo flight will be conducted;
(2) Navigation training at night in the vicinity of the airport where the solo flight will be conducted;
(3) An endorsement from an authorized instructor in the student's logbook for the specific make and model aircraft to be flown for night solo flight; and
(4) An endorsement in the student's logbook for the specific make and model aircraft to be flown for night solo flight by an authorized instructor who gave the training within the 90-day period preceding the date of the flight.

(n) *Limitations on flight instructors authorizing solo flight.* (1) No instructor may authorize a student pilot to perform a solo flight unless that instructor has—
(i) Given that student pilot training in the make and model of aircraft or a similar make and model of aircraft in which the solo flight is to be flown;
(ii) Determined the student pilot is proficient in the maneuvers and procedures prescribed in this section;
(iii) Determined the student pilot is proficient in the make and model of aircraft to be flown;
(iv) Ensured that the student pilot's certificate has been endorsed by an instructor authorized to provide flight training for the specific make and model aircraft to be flown; and
(v) Endorsed the student pilot's logbook for the specific make and model aircraft to be flown, and that endorsement remains current for solo flight privileges, provided an authorized instructor updates the student's logbook every 90 days thereafter.
(2) The flight training required by this section must be given by an instructor authorized to provide flight training who is appropriately rated and current.

§ 61.89 General limitations.

(a) A student pilot may not act as pilot in command of an aircraft:
(1) That is carrying a passenger;
(2) That is carrying property for compensation or hire;
(3) For compensation or hire;
(4) In furtherance of a business;
(5) On an international flight, except that a student pilot may make solo training flights from Haines, Gustavus, or Juneau, Alaska, to White Horse, Yukon, Canada, and return over the province of British Columbia;
(6) With a flight or surface visibility of less than 3 statute miles during daylight hours or 5 statute miles at night;
(7) When the flight cannot be made with visual reference to the surface; or
(8) In a manner contrary to any limitations placed in the pilot's logbook by an authorized instructor.

(b) A student pilot may not act as a required pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or regulations under which the flight is conducted, except when receiving flight training from an authorized instructor on board an airship, and no person other than a required flight crewmember is carried on the aircraft.

§ 61.91 [Reserved]

§ 61.93 Solo cross-country flight requirements.

(a) *General.* (1) Except as provided in paragraph (b) of this section, a student pilot must meet the requirements of this section before—
(i) Conducting a solo cross-country flight, or any flight greater than 25 nautical miles from the airport from where the flight originated.
(ii) Making a solo flight and landing at any location other than the airport of origination.
(2) Except as provided in paragraph (b) of this section, a student pilot who seeks solo cross-country flight privileges must:
(i) Have received flight training from an instructor authorized to provide flight training on the maneuvers and procedures of this section that are appropriate to the make and model of aircraft for which solo cross-country privileges are sought;
(ii) Have demonstrated cross-country proficiency on the appropriate maneuvers and procedures of this section to an authorized instructor;
(iii) Have satisfactorily accomplished the pre-solo flight maneuvers and procedures required by § 61.87 of this part in the make and model of aircraft or similar make and model of aircraft for which solo cross-country privileges are sought; and
(iv) Comply with any limitations included in the instructor's endorsement that are required by paragraph (c) of this section.
(3) A student pilot who seeks solo cross-country flight privileges must have received ground and flight training from an authorized instructor on the cross-country maneuvers and procedures listed in this section that are appropriate to the aircraft to be flown.

(b) *Authorization to perform certain solo flights and cross-country flights.* A

student pilot must obtain an endorsement from an authorized instructor to make solo flights from the airport where the student pilot normally receives training to another location. A student pilot who receives this endorsement must comply with the requirements of this paragraph.

(1) Solo flights may be made to another airport that is within 25 nautical miles from the airport where the student pilot normally receives training, provided—

(i) An authorized instructor has given the student pilot flight training at the other airport, and that training includes flight in both directions over the route, entering and exiting the traffic pattern, and takeoffs and landings at the other airport;

(ii) The instructor who gave the training endorses the student pilot's logbook authorizing the flight;

(iii) The student pilot has current solo flight endorsements in accordance with § 61.87 of this part;

(iv) The instructor has determined that the student pilot is proficient to make the flight; and

(v) The purpose of the flight is to practice takeoffs and landings at that other airport.

(2) Repeated specific solo cross-country flights may be made to another airport that is within 50 nautical miles of the airport from which the flight originated, provided—

(i) The authorized instructor has given the student flight training in both directions over the route, including entering and exiting the traffic patterns, takeoffs, and landings at the airports to be used;

(ii) The instructor who gave the training has endorsed the student's logbook certifying that the student is proficient to make such flights;

(iii) The student has current solo flight endorsements in accordance with § 61.87 of this part; and

(iv) The student has current solo cross-country flight endorsements in accordance with paragraph (c) of this section; however, for repeated solo cross-country flights to another airport within 50 nautical miles from which the flight originated, separate endorsements are not required to be made for each flight.

(c) *Endorsements for solo cross-country flights.* Except as specified in paragraph (b)(2) of this section, a student pilot must have the endorsements prescribed in this paragraph for each cross-country flight:

(1) *Student pilot certificate endorsement.* A student pilot must have a solo cross-country endorsement from the authorized instructor who conducted the training, and that endorsement must be placed on that person's student pilot certificate for the specific category of aircraft to be flown.

(2) *Logbook endorsement.* (i) A student pilot must have a solo cross-country endorsement from an authorized instructor that is placed in the student pilot's logbook for the specific make and model of aircraft to be flown.

(ii) A certificated pilot who is receiving training for an additional aircraft category and class rating must have an endorsement from an authorized instructor that is placed in the student pilot's logbook for the specific make and model of aircraft to be flown.

(iii) For each cross-country flight, the authorized instructor who reviews the cross-country planning must make an endorsement in the person's logbook after reviewing that person's cross-country planning, as specified in paragraph (d) of this section. The endorsement must—

(A) Specify the make and model of aircraft to be flown;

(B) State that the student's preflight planning and preparation is correct and that the student is prepared to make the flight safely under the known conditions; and

(C) State that any limitations required by the student's instructor are met.

(d) *Limitations on authorized instructors to permit solo cross-country flights.* An authorized instructor may not permit a student pilot to conduct a solo cross-country flight unless that instructor has:

(1) Determined that the student's cross-country planning is correct for the flight;

(2) Reviewed the current and forecast weather conditions and has determined that the flight can be completed under VFR;

(3) Determined that the student is proficient to conduct the flight safely;

(4) Determined that the student has the appropriate solo cross-country endorsement for the make and model of aircraft to be flown; and

(5) Determined that the student's solo flight endorsement is current for the make and model aircraft to be flown.

(e) *Maneuvers and procedures for cross-country flight training in a single-engine airplane.* A student pilot who is receiving training for cross-country flight in a single-engine airplane must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Takeoff, approach, and landing procedures, including short-field, soft-field, and crosswind takeoffs, approaches, and landings;

(11) Climbs at best angle and best rate; and

(12) Control and maneuvering solely by reference to flight instruments, including straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives.

(f) *Maneuvers and procedures for cross-country flight training in a multiengine airplane.* A student pilot who is receiving training for cross-country flight in a multiengine airplane must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Takeoff, approach, and landing procedures, including short-field, soft-field, and crosswind takeoffs, approaches, and landings;

(11) Climbs at best angle and best rate; and

(12) Control and maneuvering solely by reference to flight instruments, including straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives.

(g) *Maneuvers and procedures for cross-country flight training in a helicopter.* A student pilot who is receiving training for cross-country flight in a helicopter must receive and log flight training for the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications; and

(10) Takeoff, approach, and landing procedures.

(h) *Maneuvers and procedures for cross-country flight training in a gyroplane.* A student pilot who is receiving training for cross-country flight in a gyroplane must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications; and

(10) Takeoff, approach, and landing procedures.

(i) *Maneuvers and procedures for cross-country flight training in a powered-lift.* A student pilot who is receiving training for cross-country flight training in a powered-lift must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Takeoff, approach, and landing procedures that include high-altitude, steep, and shallow takeoffs, approaches, and landings; and

(11) Control and maneuvering solely by reference to flight instruments, including straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives.

(j) *Maneuvers and procedures for cross-country flight training in a glider.* A student pilot who is receiving training for cross-country flight in a glider must receive and log flight training in the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Landings accomplished without the use of the altimeter from at least 2,000 feet above the surface; and

(10) Recognition of weather and upper air conditions favorable for cross-country soaring, ascending and descending flight, and altitude control.

(k) *Maneuvers and procedures for cross-country flight training in an airship.* A student pilot who is receiving training for cross-country flight in an airship must receive and log flight training for the following maneuvers and procedures:

(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass;

(2) Use of aircraft performance charts pertaining to cross-country flight;

(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognition of critical weather situations and estimating visibility while in flight;

(4) Emergency procedures;

(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach;

(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance;

(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown;

(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications;

(9) Use of radios for VFR navigation and two-way communications;

(10) Control of air pressure with regard to ascending and descending flight and altitude control;

(11) Control of the airship solely by reference to flight instruments; and

(12) Recognition of weather and upper air conditions conducive for the direction of cross-country flight.

§ 61.95 Operations in Class B airspace and at airports located within Class B airspace.

(a) A student pilot may not operate an aircraft on a solo flight in Class B airspace unless:

(1) The student pilot has received both ground and flight training from an authorized instructor on that Class B airspace area, and the flight training was received in the specific Class B airspace area for which solo flight is authorized;

(2) The logbook of that student pilot has been endorsed by the instructor who gave the student pilot flight training, and the endorsement is dated within the 90-day period preceding the date of the flight in that Class B airspace area; and

(3) The logbook endorsement specifies that the student pilot has received the required ground and flight training, and has been found proficient to conduct solo flight in that specific Class B airspace area.

(b) A student pilot may not operate an aircraft on a solo flight to, from, or at an airport located within Class B airspace pursuant to § 91.131(b) of this chapter unless:

(1) The student pilot has received both ground and flight training from an instructor authorized to provide training to operate at that airport, and the flight and ground training has been received at the specific airport for which the solo flight is authorized;

(2) The logbook of that student pilot has been endorsed by an authorized instructor who gave the student pilot flight training, and the endorsement is dated within the 90-day period preceding the date of the flight at that airport; and

(3) The logbook endorsement specifies that the student pilot has received the required ground and flight training, and has been found proficient to conduct solo flight operations at that specific airport.

Subpart D—Recreational Pilots

§ 61.96 Applicability and eligibility requirements: General.

(a) This subpart prescribes the requirement for the issuance of recreational pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

(b) To be eligible for a recreational pilot certificate, a person who applies for that certificate must:

(1) Be at least 17 years of age;

(2) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft;

(3) Receive a logbook endorsement from an authorized instructor who—

(i) Conducted the training or reviewed the applicant's home study on the aeronautical knowledge areas listed in § 61.97(b) of this part that apply to the aircraft category and class rating sought; and

(ii) Certified that the applicant is prepared for the required knowledge test.

(4) Pass the required knowledge test on the aeronautical knowledge areas listed in § 61.97(b) of this part;

(5) Receive flight training and a logbook endorsement from an authorized instructor who—

(i) Conducted the training on the areas of operation listed in § 61.98(b) of this part that apply to the aircraft category and class rating sought; and

(ii) Certified that the applicant is prepared for the required practical test.

(6) Meet the aeronautical experience requirements of § 61.99 of this part that apply to the aircraft category and class rating sought;

(7) Pass the required practical test on the areas of operation listed in § 61.98(b) of this part that apply to the aircraft category and class rating sought; and

(8) Comply with the sections of this part that apply to the aircraft category and class rating sought.

§ 61.97 Aeronautical knowledge.

(a) *General.* A person who applies for a recreational pilot certificate must receive and log ground training from an authorized instructor or complete a home-study course on the aeronautical knowledge areas of paragraph (b) of this section that apply to the aircraft category and class rating sought.

(b) *Aeronautical knowledge areas.* (1) Applicable Federal Aviation Regulations of this chapter that relate to recreational pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Use of the applicable portions of the ''Aeronautical Information Manual'' and FAA ACs;

(4) Use of aeronautical charts for VFR navigation using pilotage with the aid of a magnetic compass;

(5) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(6) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(7) Effects of density altitude on takeoff and climb performance;

(8) Weight and balance computations;

(9) Principles of aerodynamics, powerplants, and aircraft systems;

(10) Stall awareness, spin entry, spins, and spin recovery techniques, if applying for an airplane single-engine rating;

(11) Aeronautical decision making and judgment; and

(12) Preflight action that includes—

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(ii) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

§ 61.98 Flight proficiency.

(a) *General.* A person who applies for a recreational pilot certificate must have received and logged ground and flight training from an authorized instructor on the areas of operation of this section that apply to the aircraft category and class rating sought.

(b) *Areas of operation.* (1) *For a single-engine airplane rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Slow flight and stalls;
(ix) Emergency operations; and
(x) Postflight procedures.
(2) *For a helicopter rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Ground reference maneuvers;
(viii) Navigation;
(ix) Emergency operations; and
(x) Postflight procedures.
(3) *For a gyroplane rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Flight at slow airspeeds;
(ix) Emergency operations; and
(x) Postflight procedures.

§ 61.99 Aeronautical experience.

A person who applies for a recreational pilot certificate must receive and log at least 30 hours of flight training time that includes at least:

(a) 15 hours of flight training from an authorized instructor on the areas of operation listed in § 61.98 of this part that consists of at least:

(1) Except as provided in § 61.100 of this part, 2 hours of flight training en route to an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, which includes at least three takeoffs and three landings at the airport located more than 25 nautical miles from the airport where the applicant normally trains; and

(2) 3 hours of flight training in the aircraft for the rating sought in preparation for the practical test within the 60 days preceding the date of the practical test.

(b) 3 hours of solo flying in the aircraft for the rating sought, on the areas of operation listed in § 61.98 of this part that apply to the aircraft category and class rating sought.

§ 61.100 Pilots based on small islands.

(a) An applicant located on an island from which the flight training required in § 61.99(a)(1) of this part cannot be accomplished without flying over water for more than 10 nautical miles from the nearest shoreline need not comply with the requirements of that section. However, if other airports that permit civil operations are available to which a flight may be made without flying over water for more than 10 nautical miles from the nearest shoreline, the applicant must show completion of a dual flight between two airports, which must include three landings at the other airport.

(b) An applicant who complies with paragraph (a) of this section and meets all requirements for the issuance of a recreational pilot certificate, except the requirements of § 61.99(a)(1) of this part, will be issued a pilot certificate with an endorsement containing the following limitation, ''Passenger carrying prohibited on flights more than 10 nautical miles from (the appropriate island).'' The limitation may be subsequently amended to include another island if the applicant complies with the requirements of paragraph (a) of this section for another island.

(c) Upon meeting the requirements of § 61.99(a)(1) of this part, the applicant may have the limitation(s) in paragraph (b) of this section removed.

§ 61.101 Recreational pilot privileges and limitations.

(a) A person who holds a recreational pilot certificate may:

(1) Carry no more than one passenger; and

(2) Not pay less than the pro rata share of the operating expenses of a flight with a passenger, provided the expenses involve only fuel, oil, airport expenses, or aircraft rental fees.

(b) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft on a flight that is within 50 nautical miles from the departure airport, provided that person has:

(1) Received ground and flight training for takeoff, departure, arrival, and landing procedures at the departure airport;

(2) Received ground and flight training for the area, terrain, and aids to navigation that are in the vicinity of the departure airport;

(3) Been found proficient to operate the aircraft at the departure airport and the area within 50 nautical miles from that airport; and

(4) Received from an authorized instructor a logbook endorsement, which is carried in the person's possession in the aircraft, that permits flight within 50 nautical miles from the departure airport.

(c) A person who holds a recreational pilot certificate may act as pilot in command of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, provided that person has:

(1) Received ground and flight training from an authorized instructor on the cross-country training requirements of subpart E of this part that apply to the aircraft rating held;

(2) Been found proficient in cross-country flying; and

(3) Received from an authorized instructor a logbook endorsement, which is carried on the person's possession in the aircraft, that certifies the person has received and been found proficient in the cross-country training requirements of subpart E of this part that apply to the aircraft rating held.

(d) Except as provided in paragraph (h) of this section, a recreational pilot may not act as pilot in command of an aircraft:

(1) That is certificated for more than four occupants, with more than one powerplant, with a powerplant of more than 180 horsepower, or with retractable landing gear.

(2) That is classified as a multiengine airplane, powered-lift, glider, airship, or balloon;

(3) That is carrying a passenger or property for compensation or hire;

(4) For compensation or hire;

(5) In furtherance of a business;

(6) Between sunset and sunrise;

(7) In airspace in which communication with air traffic control is required;

(8) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(9) When the flight or surface visibility is less than 3 statute miles;

(10) Without visual reference to the surface;

(11) On a flight outside the United States;

(12) To demonstrate that aircraft in flight to a prospective buyer;

(13) That is used in a passenger-carrying airlift and sponsored by a charitable organization; and

(14) That is towing any object.

(e) A recreational pilot may not act as a pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted, except when:

(1) Receiving flight training from a person authorized to provide flight training on board an airship; and

(2) No person other than a required flight crewmember is carried on the aircraft.

(f) A person who holds a recreational pilot certificate, has logged fewer than 400 flight hours, and has not logged pilot-in-command time in an aircraft within the 180 days preceding the flight shall not act as pilot in command of an aircraft until the pilot receives flight

training and a logbook endorsement from an authorized instructor, and the instructor certifies that the person is proficient to act as pilot in command of the aircraft. This requirement can be met in combination with the requirements of §§ 61.56 and 61.57 of this part, at the discretion of the authorized instructor.

(g) A recreational pilot certificate issued under this subpart carries the notation, ''Holder does not meet ICAO requirements.''

(h) For the purpose of obtaining additional certificates or ratings while under the supervision of an authorized instructor, a recreational pilot may fly as the sole occupant of an aircraft:

(1) For which the pilot does not hold an appropriate category or class rating;

(2) Within airspace that requires communication with air traffic control; or

(3) Between sunset and sunrise, provided the flight or surface visibility is at least 5 statute miles.

(i) In order to fly solo as provided in paragraph (h) of this section, the recreational pilot must meet the appropriate aeronautical knowledge and flight training requirements of § 61.87 for that aircraft. When operating an aircraft under the conditions specified in paragraph (h) of this section, the recreational pilot shall carry the logbook that has been endorsed for each flight by an authorized instructor who:

(1) Has given the recreational pilot training in the make and model of aircraft in which the solo flight is to be made;

(2) Has found that the recreational pilot has met the applicable requirements of § 61.87; and

(3) Has found that the recreational pilot is competent to make solo flights in accordance with the logbook endorsement.

Subpart E—Private Pilots

§ 61.102 Applicability.

This subpart prescribes the requirements for the issuance of private pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.103 Eligibility requirements: General.

To be eligible for a private pilot certificate, a person must:

(a) Be at least 17 years of age for a rating in other than a glider or balloon.

(b) Be at least 16 years of age for a rating in a glider or balloon.

(c) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft.

(d) Receive a logbook endorsement from an authorized instructor who:

(1) Conducted the training or reviewed the person's home study on the aeronautical knowledge areas listed in § 61.105(b) of this part that apply to the aircraft rating sought; and

(2) Certified that the person is prepared for the required knowledge test.

(e) Pass the required knowledge test on the aeronautical knowledge areas listed in § 61.105(b) of this part.

(f) Receive flight training and a logbook endorsement from an authorized instructor who:

(1) Conducted the training in the areas of operation listed in § 61.107(b) of this part that apply to the aircraft rating sought; and

(2) Certified that the person is prepared for the required practical test.

(g) Meet the aeronautical experience requirements of this part that apply to the aircraft rating sought before applying for the practical test.

(h) Pass a practical test on the areas of operation listed in § 61.107(b) of this part that apply to the aircraft rating sought.

(i) Comply with the appropriate sections of this part that apply to the aircraft category and class rating sought.

§ 61.105 Aeronautical knowledge.

(a) *General.* A person who is applying for a private pilot certificate must receive and log ground training from an authorized instructor or complete a home-study course on the aeronautical knowledge areas of paragraph (b) of this section that apply to the aircraft category and class rating sought.

(b) *Aeronautical knowledge areas.* (1) Applicable Federal Aviation Regulations of this chapter that relate to private pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Use of the applicable portions of the ''Aeronautical Information Manual'' and FAA ACs;

(4) Use of aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems;

(5) Radio communication procedures;

(6) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(7) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(8) Effects of density altitude on takeoff and climb performance;

(9) Weight and balance computations;

(10) Principles of aerodynamics, powerplants, and aircraft systems;

(11) Stall awareness, spin entry, spins, and spin recovery techniques for the airplane and glider category ratings;

(12) Aeronautical decision making and judgment; and

(13) Preflight action that includes—

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(ii) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

§ 61.107 Flight proficiency.

(a) *General.* A person who applies for a private pilot certificate must receive and log ground and flight training from an authorized instructor on the areas of operation of this section that apply to the aircraft category and class rating sought.

(b) *Areas of operation.* (1) *For an airplane category rating with a single-engine class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Basic instrument maneuvers;

(x) Emergency operations;

(xi) Night operations, except as provided in § 61.110 of this part; and

(xii) Postflight procedures.

(2) *For an airplane category rating with a multiengine class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Basic instrument maneuvers;

(x) Emergency operations;

(xi) Multiengine operations;

(xii) Night operations, except as provided in § 61.110 of this part; and

(xiii) Postflight procedures.

(3) *For a rotorcraft category rating with a helicopter class rating:* (i) Preflight preparation;

(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Navigation;
(viii) Emergency operations;
(ix) Night operations, except as provided in § 61.110 of this part; and
(x) Postflight procedures.
(4) *For a rotorcraft category rating with a gyroplane class rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Flight at slow airspeeds;
(ix) Emergency operations;
(x) Night operations, except as provided in § 61.110 of this part; and
(xi) Postflight procedures.
(5) *For a powered-lift category rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Ground reference maneuvers;
(viii) Navigation;
(ix) Slow flight and stalls;
(x) Basic instrument maneuvers;
(xi) Emergency operations;
(xii) Night operations, except as provided in § 61.110 of this part; and
(xiii) Postflight procedures.
(6) *For a glider category rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport and gliderport operations;
(iv) Launches and landings;
(v) Performance speeds;
(vi) Soaring techniques;
(vii) Performance maneuvers;
(viii) Navigation;
(ix) Slow flight and stalls;
(x) Emergency operations; and
(xi) Postflight procedures.
(7) *For a lighter-than-air category rating with an airship class rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Emergency operations; and
(ix) Postflight procedures.
(8) *For a lighter-than-air category rating with a balloon class rating:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Launches and landings;
(v) Performance maneuvers;
(vi) Navigation;
(vii) Emergency operations; and
(viii) Postflight procedures.

§ 61.109 Aeronautical experience.

Except as provided in paragraph (i) of this section, a person who applies for a private pilot certificate with an airplane, rotorcraft, or powered-lift category rating must receive and log at least 40 hours of flight time that includes at least 20 hours of flight training from an authorized instructor and 10 hours of solo flight training in the areas of operation listed in § 61.107 of this part, and the training must include at least:
(a) *For an airplane single-engine rating:* (1) 3 hours of cross-country flight training in a single-engine airplane;
(2) Except as provided in § 61.110 of this part, 3 hours of night flight training in a single-engine airplane that includes—
(i) One cross-country flight of over 100 nautical miles total distance; and
(ii) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(3) 3 hours of instrument flight training in a single-engine airplane;
(4) 3 hours of flight training in preparation for the practical test in a single-engine airplane, which must have been performed within 60 days preceding the date of the test; and
(5) 10 hours of solo flight time in a single-engine airplane, consisting of at least—
(i) 5 hours of solo cross-country flight;
(ii) One solo cross-country flight of at least 150 nautical miles total distance, with full-stop landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations; and
(iii) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.
(b) *For an airplane multiengine rating:* (1) 3 hours of cross-country flight training in a multiengine airplane;
(2) Except as provided in § 61.110 of this part, 3 hours of night flight training in a multiengine airplane that includes—
(i) One cross-country flight of over 100 nautical miles total distance; and
(ii) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(3) 3 hours of instrument flight training in a multiengine airplane;
(4) 3 hours of flight training in preparation for the practical test in a multiengine airplane, which must have been performed within the 60-day period preceding the date of the test; and
(5) 10 hours of solo flight time in an airplane consisting of at least—
(i) 5 hours of solo cross-country flight;
(ii) One solo cross-country flight of at least 150 nautical miles total distance, with full-stop landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations; and
(iii) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.
(c) *For a helicopter rating:* (1) 3 hours of cross-country flight training in a helicopter;
(2) Except as provided in § 61.110 of this part, 3 hours of night flight training in a helicopter that includes—
(i) One cross-country flight of over 50 nautical miles total distance; and
(ii) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(3) 3 hours of flight training in preparation for the practical test in a helicopter, which must have been performed within 60 days preceding the date of the test; and
(4) 10 hours of solo flight time in a helicopter, consisting of at least—
(i) 3 hours cross-country flight time;
(ii) One solo cross-country flight of at least 75 nautical miles total distance, with landings at a minimum of three points, and one segment of the flight being a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and
(iii) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.
(d) *For a gyroplane rating:* (1) 3 hours of cross-country flight training in a gyroplane;
(2) Except as provided in § 61.110 of this part, 3 hours of night flight training in a gyroplane that includes—
(i) One cross-country flight of over 50 nautical miles total distance; and
(ii) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.
(3) 3 hours of flight training in preparation for the practical test in a gyroplane, which must have been performed within the 60-day period preceding the date of the test; and

(4) 10 hours of solo flight time in a gyroplane, and consisting of at least—

(i) 3 hours of cross-country flight time;

(ii) One solo cross-country flight of over 75 nautical miles total distance, with landings at a minimum of three points, and one segment of the flight being a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and

(iii) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(e) *For a powered-lift rating:* (1) 3 hours of cross-country flight training in a powered-lift;

(2) Except as provided in § 61.110 of this part, 3 hours of night flight training in a powered-lift that includes—

(i) One cross-country flight of over 100 nautical miles total distance; and

(ii) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(3) 3 hours of instrument flight training in a powered-lift;

(4) 3 hours of flight training in preparation for the practical test in a powered-lift, which must have been performed within the 60-day period preceding the date of the test; and

(5) 10 hours of solo flight time in an airplane or powered-lift consisting of at least—

(i) 5 hours cross-country flight time;

(ii) One cross-country flight of at least 150 nautical miles total distance, with landings at a minimum of three points, and one segment of the flight being a straight-line distance of at least 50 nautical miles between the takeoff and landing locations; and

(iii) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(f) *For a glider category rating:* (1) If the applicant has not logged at least 40 hours of flight time as a pilot in a heavier-than-air aircraft, at least 10 hours of flight training in a glider, and 20 training flights performed on the areas of operation listed in § 61.107(b)(6) of this part that apply to gliders that include—

(i) 2 hours of solo flight in gliders in the areas of operation listed in § 61.107(b)(6) of this part that apply to gliders, with not less than 10 launches and landings being performed; and

(ii) Three training flights in a glider in preparation for the practical test within the 60-day period preceding the practical test.

(2) If the applicant has logged at least 40 hours of flight time in heavier-than-air aircraft, at least 3 hours of flight training in a glider, and 10 training flights performed on the areas of operation listed in § 61.107 of this part that apply to gliders that include—

(i) 10 solo flights in gliders on the areas of operation listed in § 61.107 of this part that apply to gliders; and

(ii) Three training flights in preparation for the practical test within the 60-day waiting period preceding the test.

(g) *For an airship rating:* (1) 25 hours of flight training in airships on the areas of operation listed in § 61.107(b)(7) of this part, which consists of at least—

(i) 3 hours of cross-country flight training in an airship;

(ii) Except as provided in § 61.110 of this part, 3 hours of night flight training in an airship that includes—

(A) A cross-country flight of over 25 nautical miles total distance; and

(B) Five takeoffs and five landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(2) 3 hours of instrument training;

(3) 3 hours of flight training in an airship in preparation for the practical test within the 60 days preceding the date of the test; and

(4) 5 hours of solo flight in an airship and with an authorized instructor.

(h) *For a balloon rating:* 10 hours of flight training that includes at least six training flights in the areas of operation listed in § 61.107(b)(8) of this part, that includes—

(1) *Gas balloon.* If the training is being performed in a gas balloon, at least two flights of 2 hours each that consists of—

(i) At least one training flight within 60 days prior to application for the rating on the areas of operation for a gas balloon;

(ii) At least one flight performing the functions of pilot in command in a gas balloon; and

(iii) At least one flight involving a controlled ascent to 3,000 feet above the launch site.

(2) *Balloon with an airborne heater.* If the training is being performed in a balloon with an airborne heater, at least—

(i) Two flights of 1 hour each within 60 days prior to application for the rating on the areas of operation appropriate to a balloon with an airborne heater;

(ii) One solo flight in a balloon with an airborne heater; and

(iii) At least one flight involving a controlled ascent to 2,000 feet above the launch site.

(i) *Permitted credit for use of an approved flight simulator or an approved flight training device.* (1) Except as provided in paragraphs (i)(2) and (i)(3) of this section, a maximum of 2.5 hours of training in an approved flight simulator or an approved flight training device representing the category, class, and type, if applicable, of aircraft appropriate to the rating sought, may be credited toward the flight training time required by this section, if received from an authorized instructor.

(2) Except as provided in paragraph (i)(1) or paragraph (i)(3) of this section, a maximum of 5 hours of training in an approved flight simulator or an approved flight training device representing the category, class, and type, if applicable, of aircraft appropriate to the rating sought, may be credited toward the flight training time required by this section if the training is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(3) Except when fewer hours are approved by the Administrator, an applicant for a private pilot certificate with an airplane, rotorcraft, or powered-lift rating, who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter need only have a total of 35 hours of aeronautical experience to meet the requirements of this section.

§ 61.110 Night flying exceptions.

(a) Subject to the limitations of paragraph (b) of this section, a person is not required to comply with the night flight training requirements of this subpart if the person receives flight training in and resides in the State of Alaska.

(b) A person who receives flight training in and resides in the State of Alaska but does not meet the night flight training requirements of this section:

(1) May be issued a pilot certificate with a limitation ''Night flying prohibited;'' and

(2) Must comply with the appropriate night flight training requirements of this subpart within the 12-calendar-month period after the issuance of the pilot certificate. At the end of that period, the certificate will be suspended until the person complies with the appropriate night training requirements of this subpart. The person may have the ''Night flying prohibited'' limitation removed if the person—

(i) Accomplishes the appropriate night flight training requirements of this subpart; and

(ii) Presents to an examiner a logbook or training record endorsement from an authorized instructor that verifies accomplishment of the appropriate

night flight training requirements of this subpart.

§ 61.111 Cross-country flights: Pilots based on small islands.

(a) Except as provided in paragraph (b) of this section, an applicant located on an island from which the cross-country flight training required in § 61.109 of this part cannot be accomplished without flying over water for more than 10 nautical miles from the nearest shoreline need not comply with the requirements of that section.

(b) If other airports that permit civil operations are available to which a flight may be made without flying over water for more than 10 nautical miles from the nearest shoreline, the applicant must show completion of two round-trip solo flights between those two airports that are farthest apart, including a landing at each airport on both flights.

(c) An applicant who complies with paragraph (a) or paragraph (b) of this section, and meets all requirements for the issuance of a private pilot certificate, except the cross-country training requirements of § 61.109 of this part, will be issued a pilot certificate with an endorsement containing the following limitation, ''Passenger carrying prohibited on flights more than 10 nautical miles from (the appropriate island).'' The limitation may be subsequently amended to include another island if the applicant complies with the requirements of paragraph (a) or paragraph (b) of this section for another island.

(d) Upon meeting the cross-country training requirements of § 61.109 of this part, the applicant may have the limitation in paragraph (c) of this section removed.

§ 61.113 Private pilot privileges and limitations: Pilot in command.

(a) Except as provided in paragraphs (b) through (g) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

(b) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if:

(1) The flight is only incidental to that business or employment; and

(2) The aircraft does not carry passengers or property for compensation or hire.

(c) A private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.

(d) A private pilot may act as pilot in command of an aircraft used in a passenger-carrying airlift sponsored by a charitable organization described in paragraph (d)(7) of this section, and for which the passengers make a donation to the organization, when the following requirements are met:

(1) The sponsor of the airlift notifies the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event and furnishes—

(i) A signed letter from the sponsor that shows the name of the sponsor, the purpose of the charitable event, the date and time of the event, and the location of the event; and

(ii) A photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57 of this part and has logged at least 200 hours of flight time.

(2) The flight is conducted from a public airport that is adequate for the aircraft to be used, or from another airport that has been approved by the FAA for the operation.

(3) No aerobatic or formation flights are conducted.

(4) Each aircraft used for the charitable event holds a standard airworthiness certificate.

(5) Each aircraft used for the charitable event is airworthy and complies with the applicable requirements of subpart E of part 91 of this chapter.

(6) Each flight for the charitable event is made during day VFR conditions.

(7) The charitable organization is an organization identified as such by the U.S. Department of Treasury.

(e) A private pilot may be reimbursed for aircraft operating expenses that are directly related to search and location operations, provided the expenses involve only fuel, oil, airport expenditures, or rental fees, and the operation is sanctioned and under the direction and control of:

(1) A local, State, or Federal agency; or

(2) An organization that conducts search and location operations.

(f) A private pilot who is an aircraft salesman and who has at least 200 hours of logged flight time may demonstrate an aircraft in flight to a prospective buyer.

(g) A private pilot who meets the requirements of § 61.69 of this part may act as pilot in command of an aircraft towing a glider.

§ 61.115 Balloon rating: Limitations.

(a) If a person who applies for a private pilot certificate with a balloon rating takes a practical test in a balloon with an airborne heater:

(1) The pilot certificate will contain a limitation restricting the exercise of the privileges of that certificate to a balloon with an airborne heater; and

(2) The limitation may be removed when the person obtains the required aeronautical experience in a gas balloon and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a gas balloon.

(b) If a person who applies for a private pilot certificate with a balloon rating takes a practical test in a gas balloon:

(1) The pilot certificate will contain a limitation restricting the exercise of the privilege of that certificate to a gas balloon; and

(2) The limitation may be removed when the person obtains the required aeronautical experience in a balloon with an airborne heater and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a balloon with an airborne heater.

§ 61.117 Private pilot privileges and limitations: Second in command of aircraft requiring more than one pilot.

Except as provided in § 61.113 of this part, no private pilot may, for compensation or hire, act as second in command of an aircraft that is type certificated for more than one pilot, nor may that pilot act as second in command of such an aircraft that is carrying passengers, or property for compensation or hire.

§ 61.118–61.120 [Reserved]

Subpart F—Commercial Pilots

§ 61.121 Applicability.

This subpart prescribes the requirements for the issuance of commercial pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.123 Eligibility requirements: General.

To be eligible for a commercial pilot certificate, a person must:

(a) Be at least 18 years of age;

(b) Be able to read, speak, write, and understand the English language. If the

applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft.

(c) Receive a logbook endorsement from an authorized instructor who:

(1) Conducted the required ground training or reviewed the person's home study on the aeronautical knowledge areas listed in § 61.125 of this part that apply to the aircraft category and class rating sought; and

(2) Certified that the person is prepared for the required knowledge test that applies to the aircraft category and class rating sought.

(d) Pass the required knowledge test on the aeronautical knowledge areas listed in § 61.125 of this part;

(e) Receive the required training and a logbook endorsement from an authorized instructor who:

(1) Conducted the training on the areas of operation listed in § 61.127(b) of this part that apply to the aircraft category and class rating sought; and

(2) Certified that the person is prepared for the required practical test.

(f) Meet the aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought before applying for the practical test;

(g) Pass the required practical test on the areas of operation listed in § 61.127(b) of this part that apply to the aircraft category and class rating sought;

(h) Hold at least a private pilot certificate issued under this part or meet the requirements of § 61.73; and

(i) Comply with the sections of this part that apply to the aircraft category and class rating sought.

§ 61.125 Aeronautical knowledge.

(a) *General.* A person who applies for a commercial pilot certificate must receive and log ground training from an authorized instructor, or complete a home-study course, on the aeronautical knowledge areas of paragraph (b) of this section that apply to the aircraft category and class rating sought.

(b) *Aeronautical knowledge areas.* (1) Applicable Federal Aviation Regulations of this chapter that relate to commercial pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Basic aerodynamics and the principles of flight;

(4) Meteorology to include recognition of critical weather situations, windshear recognition and avoidance, and the use of aeronautical weather reports and forecasts;

(5) Safe and efficient operation of aircraft;

(6) Weight and balance computations;

(7) Use of performance charts;

(8) Significance and effects of exceeding aircraft performance limitations;

(9) Use of aeronautical charts and a magnetic compass for pilotage and dead reckoning;

(10) Use of air navigation facilities;

(11) Aeronautical decision making and judgment;

(12) Principles and functions of aircraft systems;

(13) Maneuvers, procedures, and emergency operations appropriate to the aircraft;

(14) Night and high-altitude operations;

(15) Procedures for operating within the National Airspace System; and

(16) Procedures for flight and ground training for lighter-than-air ratings.

§ 61.127 Flight proficiency.

(a) *General.* A person who applies for a commercial pilot certificate must receive and log ground and flight training from an authorized instructor on the areas of operation of this section that apply to the aircraft category and class rating sought.

(b) *Areas of operation.* (1) *For an airplane category rating with a single-engine class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Emergency operations;

(x) High-altitude operations; and

(xi) Postflight procedures.

(2) *For an airplane category rating with a multiengine class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Navigation;

(vii) Slow flight and stalls;

(viii) Emergency operations;

(ix) Multiengine operations;

(x) High-altitude operations; and

(xi) Postflight procedures.

(3) *For a rotorcraft category rating with a helicopter class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Navigation;

(viii) Emergency operations;

(ix) Special operations; and

(x) Postflight procedures.

(4) *For a rotorcraft category rating with a gyroplane class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Navigation;

(vii) Flight at slow airspeeds;

(viii) Emergency operations; and

(ix) Postflight procedures.

(5) *For a powered-lift category rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Ground reference maneuvers;

(viii) Navigation;

(ix) Slow flight and stalls;

(x) Emergency operations;

(xi) High-altitude operations;

(xii) Special operations; and

(xiii) Postflight procedures.

(6) *For a glider category rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and gliderport operations;

(iv) Launches and landings;

(v) Performance speeds;

(vi) Soaring techniques;

(vii) Performance maneuvers;

(viii) Navigation;

(ix) Slow flight and stalls;

(x) Emergency operations; and

(xi) Postflight procedures.

(7) *For a lighter-than-air category rating with an airship class rating:* (i) Fundamentals of instructing;

(ii) Technical subjects;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport operations;

(vii) Takeoffs, landings, and go-arounds;

(viii) Performance maneuvers;

(ix) Navigation;

(x) Emergency operations; and

(xi) Postflight procedures.

(8) *For a lighter-than-air category rating with a balloon class rating:* (i) Fundamentals of instructing;

(ii) Technical subjects;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;
(vi) Airport operations;
(vii) Launches and landings;
(viii) Performance maneuvers;
(ix) Navigation;
(x) Emergency operations; and
(xi) Postflight procedures.

§ 61.129 Aeronautical experience.

(a) *For an airplane single-engine rating.* Except as provided in paragraph (i) of this section, a person who applies for a commercial pilot certificate with an airplane category and single-engine class rating must log at least 250 hours of flight time as a pilot (of which 50 hours may have been accomplished in an approved flight simulator or approved flight training device that is representative of a single-engine airplane) that consists of at least:

(1) 100 hours in powered aircraft, of which 50 hours must be in airplanes.

(2) 100 hours of pilot in command flight time, which includes at least—

(i) 50 hours in airplanes; and

(ii) 50 hours in cross-country flight in airplanes.

(3) 20 hours of training on the areas of operation listed in § 61.127(b)(1) of this part that includes at least—

(i) 10 hours of instrument training of which at least 5 hours must be in a single-engine airplane;

(ii) 10 hours of training in an airplane that has a retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight of at least 2 hours in a single-engine airplane in day VFR conditions, consisting of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One cross-country flight of at least 2 hours in a single-engine airplane in night VFR conditions, consisting of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(v) 3 hours in a single-engine airplane in preparation for the practical test within the 60-day period preceding the date of the test.

(4) 10 hours of solo flight in a single-engine airplane on the areas of operation listed in § 61.127(b)(1) of this part, which includes at least—

(i) One cross-country flight of not less than 300 nautical miles total distance, with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. However, if this requirement is being met in Hawaii, the longest segment need only have a straight-line distance of at least 150 nautical miles; and

(ii) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(b) *For an airplane multiengine rating.* A person who applies for a commercial pilot certificate with an airplane category and multiengine class rating must log at least 250 hours of flight time as a pilot (of which 50 hours may have been accomplished in an approved flight simulator or approved flight training device that is representative of a multiengine airplane) that consists of at least:

(1) 100 hours in powered aircraft, of which 50 hours must be in airplanes.

(2) 100 hours of pilot in command flight time, which includes at least—

(i) 50 hours in airplanes; and

(ii) 50 hours in cross-country flight in airplanes.

(3) 20 hours of training on the areas of operation listed in § 61.127(b)(2) of this part that includes at least—

(i) 10 hours of instrument training of which at least 5 hours must be in a multiengine airplane;

(ii) 10 hours of training in a multiengine airplane that has a retractable landing gear, flaps, and controllable pitch propellers, or is turbine-powered;

(iii) One cross-country flight of at least 2 hours in a multiengine airplane in day VFR conditions, consisting of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iv) One cross-country flight of at least 2 hours in a multiengine airplane in night VFR conditions, consisting of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(v) 3 hours in a multiengine airplane in preparation for the practical test within the 60-day period preceding the date of the test.

(4) 10 hours of flight time performing the duties of pilot in command in a multiengine airplane with an authorized instructor on the areas of operation listed in § 61.127(b)(2) of this part, which includes at least—

(i) One cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. However, if this requirement is being met in Hawaii, the longest segment need only have a straight-line distance of at least 150 nautical miles; and

(ii) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(c) *For a helicopter rating.* A person who applies for a commercial pilot certificate with a rotorcraft category and helicopter class rating must log at least 150 hours of flight time as a pilot (of which 25 hours may have been accomplished in an approved flight simulator or approved flight training device that is representative of a helicopter) that consists of at least:

(1) 100 hours in powered aircraft, of which 50 hours must be in helicopters.

(2) 100 hours of pilot in command flight time, which includes at least—

(i) 35 hours in helicopters; and

(ii) 10 hours in cross-country flight in helicopters.

(3) 20 hours of training on the areas of operation listed in § 61.127(b)(3) of this part that includes at least—

(i) 10 hours of instrument training in an aircraft;

(ii) One cross-country flight of at least 2 hours in a helicopter in day VFR conditions, consisting of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) One cross-country flight of at least 2 hours in a helicopter in night VFR conditions, consisting of a total straight-line distance of more than 50 nautical miles from the original point of departure; and

(iv) 3 hours in a helicopter in preparation for the practical test within the 60-day period preceding the date of the test.

(4) 10 hours of solo flight in a helicopter on the areas of operation listed in § 61.127(b)(3) of this part, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure; and

(ii) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern).

(d) *For a gyroplane rating.* A person who applies for a commercial pilot certificate with a rotorcraft category and gyroplane class rating must log at least 150 hours of flight time as a pilot (of which 5 hours may have been accomplished in an approved flight simulator or approved flight training device that is representative of a gyroplane) that consists of at least:

(1) 100 hours in powered aircraft, of which 25 hours must be in gyroplanes.

(2) 100 hours of pilot in command flight time, which includes at least—

(i) 10 hours in gyroplanes; and

(ii) 3 hours in cross-country flight in gyroplanes.

(3) 20 hours of training on the areas of operation listed in § 61.127(b)(4) of this part that includes at least—

(i) 5 hours of instrument training in an aircraft;

(ii) One cross-country flight of at least 2 hours in a gyroplane in day VFR conditions, consisting of a total straight-line distance of more than 50 nautical miles from the original point of departure;

(iii) One cross-country flight of at least 2 hours in a gyroplane in night VFR conditions, consisting of a total straight-line distance of more than 50 nautical miles from the original point of departure; and

(iv) 3 hours in a gyroplane in preparation for the practical test within the 60-day period preceding the date of the test.

(4) 10 hours of solo flight in a gyroplane on the areas of operation listed in § 61.127(b)(4) of this part, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 50 nautical miles from the original point of departure; and

(ii) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern).

(e) *For a powered-lift rating.* A person who applies for a commercial pilot certificate with a powered-lift category rating must log at least 250 hours of flight time as a pilot (of which 50 hours may have been accomplished in an approved flight simulator or approved flight training device that is representative of a powered-lift) that consists of at least:

(1) 100 hours in powered aircraft, of which 50 hours must be in a powered-lift.

(2) 100 hours of pilot in command flight time, which includes at least—

(i) 50 hours in a powered-lift; and

(ii) 50 hours in cross-country flight in a powered-lift.

(3) 20 hours of training on the areas of operation listed in § 61.127(b)(5) of this part that includes at least—

(i) 10 hours of instrument training, of which at least 5 hours must be in a powered-lift;

(ii) One cross-country flight of at least 2 hours in a powered-lift in day VFR conditions, consisting of a total straight-line distance of more than 100 nautical miles from the original point of departure;

(iii) One cross-country flight of at least 2 hours in a powered-lift, consisting of a total straight-line distance of more than 100 nautical miles from the original point of departure; and

(iv) 3 hours in a powered-lift in preparation for the practical test within the 60-day period preceding the date of the test.

(4) 10 hours of solo flight in a powered-lift on the areas of operation listed in § 61.127(b)(5) of this part, which includes at least—

(i) One cross-country flight of not less than 300 nautical miles total distance with landings at a minimum of three points, one of which is a straight-line distance of at least 250 nautical miles from the original departure point. However, if this requirement is being met in Hawaii the longest segment need only have a straight-line distance of at least 150 nautical miles; and

(ii) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(f) *For a glider rating.* A person who applies for a commercial pilot certificate with a glider category rating must log at least:

(1) 25 hours as a pilot in gliders and 100 flights in gliders as pilot in command; which includes at least—

(i) 3 hours of flight training or 10 training flights in gliders on the areas of operation listed in § 61.127(b)(6) of this part;

(ii) 2 hours of solo flight that includes not less than 10 solo flights in gliders on the areas of operation listed in § 61.127(b)(6) of this part; and

(iii) Three training flights in preparation for the practical test within the 60-day period preceding the date of the test; or

(2) 200 hours of flight time as a pilot in heavier-than-air aircraft, and 20 flights in gliders as pilot in command, which includes at least—

(i) 3 hours of flight training or 10 training flights on the areas of operation listed in § 61.127(b)(6) of this part;

(ii) Five solo flights in a glider on the areas of operation listed in § 61.127(b)(6) of this part; and

(iii) Three training flights in preparation for the practical test within the 60-day period preceding the date of the test.

(g) *For an airship rating.* A person who applies for a commercial pilot certificate with a lighter-than-air category and airship class rating must log at least 200 hours of flight time as a pilot, which includes at least the following hours:

(1) 50 hours in airships.

(2) 30 hours of pilot-in-command time in airships, which consists of at least—

(i) 10 hours of cross-country flight time in airships; and

(ii) 10 hours of night flight time in airships.

(3) 40 hours of instrument time, which consists of at least 20 hours in flight, of which 10 hours must be in flight in airships.

(4) 20 hours of flight training in airships on the areas of operation listed in § 61.127(b)(7) of this part, which includes at least—

(i) 3 hours in an airship in preparation for the practical test within the 60-day period preceding the date of the test;

(ii) One cross-country flight of at least 1 hour in duration in an airship in day VFR conditions, consisting of a total straight-line distance of more than 25 nautical miles from the original point of departure; and

(iii) One cross-country flight of at least 1 hour in duration in an airship in night VFR conditions, consisting of a total straight-line distance of more than 25 nautical miles from the original point of departure.

(5) 10 hours of flight training performing the functions of pilot in command with an authorized instructor on the areas of operation listed in § 61.127(b)(7) of this part, which includes at least—

(i) One cross-country flight with landings at a minimum of three points, with one segment consisting of a straight-line distance of at least 25 nautical miles from the original point of departure; and

(ii) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight in the traffic pattern).

(h) *For a balloon rating.* A person who applies for a commercial pilot certificate with a lighter-than-air category and a balloon class rating must log at least 35 hours of flight time as a pilot, which includes at least the following requirements:

(1) 20 hours in balloons;

(2) 10 flights in balloons;

(3) Two flights in balloons as the pilot in command; and

(4) 10 hours of flight training that includes at least 10 training flights in balloons on the areas of operation listed in § 61.127(b)(8) of this part, which consists of at least—

(i) For a gas balloon—

(A) Two training flights of 2 hours each in a gas balloon on the areas of operation appropriate to a gas balloon within 60 days prior to application for the rating;

(B) Two flights performing the functions of pilot in command in a gas balloon on the appropriate areas of operation; and

(C) One flight involving a controlled ascent to 5,000 feet above the launch site.

(ii) For a balloon with an airborne heater—

(A) Two training flights of 1 hour each in a balloon with an airborne heater on the areas of operation appropriate to a balloon with an airborne heater within 60 days prior to application for the rating;

(B) Two solo flights in a balloon with an airborne heater on the appropriate areas of operation; and

(C) One flight involving a controlled ascent to 3,000 feet above the launch site.

(i) *Permitted credit for use of an approved flight simulator or approved flight training device.* (1) Except as provided in paragraph (i)(3) of this section, an applicant who has not accomplished the training required by this section in a course conducted by a training center certificated under part 142 of this chapter may:

(i) Credit a maximum of 50 hours toward the total aeronautical experience requirements for an airplane or powered-lift rating, provided the aeronautical experience was obtained from an authorized instructor in an approved flight simulator or an approved flight training device that represents that class of airplane or powered-lift category and type, if applicable, appropriate to the rating sought; and

(ii) Credit a maximum of 25 hours toward the total aeronautical experience requirements of this section for a helicopter rating, provided the aeronautical experience was obtained from an authorized instructor in an approved flight simulator or an approved flight training device that represents a helicopter and type, if applicable, appropriate to the rating sought.

(2) Except as provided in paragraph (i)(3) of this section, an applicant who has accomplished the training required by this section in a course conducted by a training center certificated under part 142 of this chapter may:

(i) Credit a maximum of 100 hours toward the total aeronautical experience requirements of this section for an airplane and powered-lift rating, provided the aeronautical experience was obtained from an authorized instructor in an approved flight simulator or an approved flight training device that represents that class of airplane or powered-lift category and type, if applicable, appropriate to the rating sought; and

(ii) Credit a maximum of 50 hours toward the total aeronautical experience requirements of this section for a helicopter rating, provided the aeronautical experience was obtained from an authorized instructor in an approved flight simulator or an approved flight training device that represents a helicopter and type, if applicable, appropriate to the rating sought.

(3) Except when fewer hours are approved by the Administrator, an applicant for a commercial pilot certificate with an airplane, helicopter, or a powered-lift rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter need only have the following total aeronautical experience to meet the aeronautical experience requirements of this section:

(i) 190 hours for an airplane or powered-lift rating; and

(ii) 150 hours for a helicopter rating.

§ 61.131 Exceptions to the night flying requirements.

(a) Subject to the limitations of paragraph (b) of this section, a person is not required to comply with the night flight training requirements of this subpart if the person receives flight training in and resides in the State of Alaska.

(b) A person who receives flight training in and resides in the State of Alaska but does not meet the night flight training requirements of this section:

(1) May be issued a pilot certificate with the limitation ''night flying prohibited.''

(2) Must comply with the appropriate night flight training requirements of this subpart within the 12-calendar-month period after the issuance of the pilot certificate. At the end of that period, the certificate will be suspended until the person complies with the appropriate night flight training requirements of this subpart. The person may have the ''night flying prohibited'' limitation removed if the person—

(i) Accomplishes the appropriate night flight training requirements of this subpart; and

(ii) Presents to an examiner a logbook or training record endorsement from an authorized instructor that verifies accomplishment of the appropriate night flight training requirements of this subpart.

§ 61.133 Commercial pilot privileges and limitations.

(a) *Privileges.* (1) *General.* A person who holds a commercial pilot certificate may act as pilot in command of an aircraft—

(i) Carrying persons or property for compensation or hire, provided the person is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation; and

(ii) For compensation or hire, provided the person is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation.

(2) *Commercial pilots with lighter-than-air category ratings.* A person with a commercial pilot certificate with a lighter-than-air category rating may—

(i) *For an airship*—(A) Give flight and ground training in an airship for the issuance of a certificate or rating;

(B) Give an endorsement on a pilot certificate for an airship;

(C) Endorse a student pilot certificate or logbook for solo operating privileges in an airship; and

(D) Act as pilot in command of an airship under IFR or in weather conditions less than the minimum prescribed for VFR flight.

(ii) *For a balloon*—(A) Give flight and ground training in a balloon for the issuance of a certificate or rating;

(B) Give an endorsement on a pilot certificate for a balloon; and

(C) Endorse a student pilot certificate or logbook for solo operating privileges in a balloon.

(b) *Limitations.* (1) A person who applies for a commercial pilot certificate with an airplane category or powered-lift category rating and does not hold an instrument rating in the same category and class will be issued a commercial pilot certificate that contains the limitation, ''The carriage of passengers for hire in (airplanes) (powered-lifts) on cross-country flights in excess of 50 nautical miles or at night is prohibited.'' The limitation may be removed when the person satisfactorily accomplishes the requirements listed in § 61.65 of this part for an instrument rating in the same category and class of aircraft listed on the person's commercial pilot certificate.

(2) If a person who applies for a commercial pilot certificate with a balloon rating takes a practical test in a balloon with an airborne heater—

(i) The pilot certificate will contain a limitation restricting the exercise of the privileges of that certificate to a balloon with an airborne heater.

(ii) The limitation specified in paragraph (b)(2)(i) of this section may be removed when the person obtains the required aeronautical experience in a gas balloon and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a gas balloon.

(3) If a person who applies for a commercial pilot certificate with a balloon rating takes a practical test in a gas balloon—

(i) The pilot certificate will contain a limitation restricting the exercise of the privileges of that certificate to a gas balloon.

(ii) The limitation specified in paragraph (b)(3)(i) of this section may be removed when the person obtains the required aeronautical experience in a balloon with an airborne heater and receives a logbook endorsement from an authorized instructor who attests to the person's accomplishment of the required aeronautical experience and ability to satisfactorily operate a balloon with an airborne heater.

§ 61.135—61.141 [Reserved]

Subpart G—Airline Transport Pilots

§ 61.151 Applicability.

This subpart prescribes the requirements for the issuance of airline transport pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings.

§ 61.153 Eligibility requirements: General.

To be eligible for an airline transport pilot certificate, a person must:

(a) Be at least 23 years of age;

(b) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's pilot certificate as are necessary for the safe operation of the aircraft;

(c) Be of good moral character;

(d) Meet at least one of the following requirements:

(1) Hold at least a commercial pilot certificate and an instrument rating;

(2) Meet the military experience requirements under § 61.73 of this part to qualify for a commercial pilot certificate, and an instrument rating if the person is a rated military pilot or former rated military pilot of an Armed Force of the United States; or

(3) Hold either a foreign airline transport pilot or foreign commercial pilot license and an instrument rating if the person holds a pilot license issued by a contracting State to the Convention on International Civil Aviation.

(e) Meet the aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought before applying for the practical test;

(f) Pass a knowledge test on the aeronautical knowledge areas of § 61.155(c) of this part that apply to the aircraft category and class rating sought;

(g) Pass the practical test on the areas of operation listed in § 61.157(e) of this part that apply to the aircraft category and class rating sought; and

(h) Comply with the sections of this part that apply to the aircraft category and class rating sought.

§ 61.155 Aeronautical knowledge.

(a) *General.* The knowledge test for an airline transport pilot certificate is based on the aeronautical knowledge areas listed in paragraph (c) of this section that are appropriate to the aircraft category and class rating sought.

(b) *Aircraft type rating.* A person who is applying for an additional aircraft type rating to be added to an airline transport pilot certificate is not required to pass a knowledge test if that person's airline transport pilot certificate lists the aircraft category and class rating that is appropriate to the type rating sought.

(c) *Aeronautical knowledge areas.* (1) Applicable Federal Aviation Regulations of this chapter that relate to airline transport pilot privileges, limitations, and flight operations;

(2) Meteorology, including knowledge of and effects of fronts, frontal characteristics, cloud formations, icing, and upper-air data;

(3) General system of weather and NOTAM collection, dissemination, interpretation, and use;

(4) Interpretation and use of weather charts, maps, forecasts, sequence reports, abbreviations, and symbols;

(5) National Weather Service functions as they pertain to operations in the National Airspace System;

(6) Windshear and microburst awareness, identification, and avoidance;

(7) Principles of air navigation under instrument meteorological conditions in the National Airspace System;

(8) Air traffic control procedures and pilot responsibilities as they relate to en route operations, terminal area and radar operations, and instrument departure and approach procedures;

(9) Aircraft loading, weight and balance, use of charts, graphs, tables, formulas, and computations, and their effect on aircraft performance;

(10) Aerodynamics relating to an aircraft's flight characteristics and performance in normal and abnormal flight regimes;

(11) Human factors;

(12) Aeronautical decision making and judgment; and

(13) Crew resource management to include crew communication and coordination.

§ 61.157 Flight proficiency.

(a) *General.* (1) The practical test for an airline transport pilot certificate is given for—

(i) An airplane category and single-engine class rating;

(ii) An airplane category and multiengine class rating;

(iii) A rotorcraft category and helicopter class rating;

(iv) A powered-lift category rating; and

(v) An aircraft type rating for the category and class ratings listed in paragraphs (a)(1)(i) through (a)(1)(iv) of this section.

(2) A person who is applying for an airline transport pilot practical test must meet—

(i) The eligibility requirements of § 61.153 of this part; and

(ii) The aeronautical knowledge and aeronautical experience requirements of this subpart that apply to the aircraft category and class rating sought.

(b) *Aircraft type rating.* Except as provided in paragraph (c) of this section, a person who is applying for an aircraft type rating to be added to an airline transport pilot certificate:

(1) Must receive and log ground and flight training from an authorized instructor on the areas of operation in this section that apply to the aircraft type rating sought;

(2) Must receive a logbook endorsement from an authorized instructor certifying that the applicant completed the training on the areas of operation listed in paragraph (e) of this section that apply to the aircraft type rating sought; and

(3) Must perform the practical test under instrument flight rules, unless the practical test cannot be accomplished under instrument flight rules because the aircraft's type certificate makes the aircraft incapable of operating under instrument flight rules. If the practical test cannot be accomplished for this reason, the person may obtain a type rating limited to ''VFR only.'' The ''VFR only'' limitation may be removed for that aircraft type when the person passes the practical test under instrument flight rules.

(c) A person who is applying for an aircraft type rating to be added to an airline transport pilot certificate or an aircraft type rating concurrently with an airline transport pilot certificate, and who is an employee of a certificate holder operating under part 121 or part 135 of this chapter, need not comply with the requirements of paragraph (b) of this section if the applicant presents a training record that shows satisfactory completion of that certificate holder's approved pilot in command training

program for the aircraft type rating sought.

(d) Any type rating(s) on the pilot certificate of an applicant who successfully completes an airline transport pilot practical test shall be included on the airline transport pilot certificate with the privileges and limitations of the airline transport pilot certificate, provided the applicant passes the practical test in the same category and class of aircraft for which the applicant holds the type rating(s). However, if a type rating for that category and class of aircraft on the superseded pilot certificate is limited to VFR, that limitation shall be carried forward to the person's airline transport pilot certificate level.

(e) *Areas of operation.* (1) *For an airplane category—single-engine class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(2) *For an airplane category—multiengine class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(3) *For a powered-lift category rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(4) *For a rotorcraft category—helicopter class rating:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Takeoff and departure phase;

(iv) In-flight maneuvers;

(v) Instrument procedures;

(vi) Landings and approaches to landings;

(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and

(ix) Postflight procedures.

(f) *Proficiency and competency checks conducted under part 121 or part 135.* (1) Successful completion of a proficiency check under § 121.441 of this chapter or successful completion of both a competency check, under § 135.293 of this chapter, and a pilot-in-command instrument proficiency check, under § 135.297 of this chapter, satisfies the requirements of this section for the appropriate aircraft rating.

(2) Any check or combination of checks used to satisfy the requirements of this section must include all maneuvers and procedures required for the issuance of a type rating. Any check must be evaluated by a designated examiner or FAA inspector.

(g) *Use of an approved flight simulator or approved flight training device for an airplane rating.* If an approved flight simulator or approved flight training device is used for accomplishing any of the training and the required practical test for an airline transport pilot certificate with an airplane category, class, and type rating, if applicable, the applicant, approved flight simulator, and approved flight training device are subject to the following requirements:

(1) The approved flight simulator and approved flight training device must represent that airplane type if the rating involves a type rating in an airplane, or is representative of an airplane if the applicant is only seeking an airplane class rating and does not require a type rating.

(2) The approved flight simulator and approved flight training device must be used in accordance with an approved course at a training center certificated under part 142 of this chapter.

(3) All training and testing (except preflight inspection) must be accomplished by the applicant to receive an airplane class rating and type rating, if applicable, without limitations and—

(i) The flight simulator must be approved as Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.159 of this part and at least one of the following—

(A) Hold a type rating for a turbojet airplane of the same class of airplane for which the type rating is sought, or have been designated by a military service as a pilot in command of an airplane of the same class of airplane for which the type rating is sought, if a turbojet type rating is sought;

(B) Hold a type rating for a turbopropeller airplane of the same class as the airplane for which the type rating is sought, or have been appointed by a military service as a pilot in command of an airplane of the same class of airplane for which the type rating is sought, if a turbopropeller airplane type rating is sought;

(C) Have at least 2,000 hours of flight time, of which 500 hours must be in turbine-powered airplanes of the same class as the airplane for which the type rating is sought;

(D) Have at least 500 hours of flight time in the same type of airplane as the airplane for which the type rating is sought; or

(E) Have at least 1,000 hours of flight time in at least two different airplanes requiring a type rating.

(4) Subject to the limitation of paragraph (g)(5) of this section, an applicant who does not meet the requirements of paragraph (g)(3) of this section may complete all training and testing (except for preflight inspection) for an additional rating if—

(i) The flight simulator is approved as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.159 of this part and at least one of the following—

(A) Holds a type rating in a propeller-driven airplane if a type rating in a turbojet airplane is sought, or holds a type rating in a turbojet airplane if a type rating in a propeller-driven airplane is sought;

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the additional rating, has logged—

(*1*) At least 100 hours of flight time in airplanes in the same class as the airplane for which the type rating is sought and which requires a type rating; and

(*2*) At least 25 hours of flight time in airplanes of the same type for which the type rating is sought.

(5) An applicant meeting only the requirements of paragraph (g)(4)(ii)(A) and (B) of this section will be issued an additional rating, or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(6) An applicant who has been issued a certificate with the limitation specified in paragraph (g)(5) of this section—

(i) May not act as pilot in command of the aircraft for which an additional rating was obtained under the provisions of this section until the limitation is removed from the certificate; and

(ii) May have the limitation removed by accomplishing 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an airplane of the same type for which the limitation applies.

(7) An applicant who does not meet the requirements of paragraph (g)(3)(ii)(A) through (E) or (g)(4)(ii)(A) and (B) of this section may be issued an airline transport pilot certificate or an additional rating to that pilot certificate after successful completion of one of the following requirements—

(i) An approved course at a part 142 training center that includes all training and testing for that certificate or rating, followed by training and testing on the following tasks, which must be successfully completed on a static airplane or in flight, as appropriate—

(A) Preflight inspection;

(B) Normal takeoff;

(C) Normal ILS approach;

(D) Missed approach; and

(E) Normal landing.

(ii) An approved course at a part 142 training center that complies with paragraphs (g)(8) and (g)(9) of this section and includes all training and testing for a certificate or rating.

(8) An applicant meeting only the requirements of paragraph (g)(7) of this section will be issued an additional rating or an airline transport pilot certificate with an additional rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(9) An applicant issued a pilot certificate with the limitation specified in paragraph (g)(8) of this section—

(i) May not act as pilot in command of the aircraft for which an additional rating was obtained under the provisions of this section until the limitation is removed from the certificate; and

(ii) May have the limitation removed by accomplishing 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an airplane of the same type for which the limitation applies.

(h) *Use of an approved flight simulator or an approved flight training device for a helicopter rating.* If an approved flight simulator or approved flight training device is used for accomplishing any of the training and the required practical test for an airline transport pilot certificate with a helicopter class rating and type rating, if applicable, the applicant, approved flight simulator, and approved flight training device are subject to the following requirements:

(1) The approved flight simulator and approved flight training device must represent that helicopter type if the rating involves a type rating in a helicopter, or is representative of a helicopter if the applicant is only seeking a helicopter class rating and does not require a type rating.

(2) The approved flight simulator and approved flight training device must be used in accordance with an approved course at a training center certificated under part 142 of this chapter.

(3) All training and testing requirements (except preflight inspection) must be accomplished by the applicant to receive a helicopter class rating and type rating, if applicable, without limitations and—

(i) The flight simulator must be approved as a Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.161 of this part and at least one of the following—

(A) Hold a type rating for a turbine-powered helicopter, or have been designated by a military service as a pilot in command of a turbine-powered helicopter, if a turbine-powered helicopter type rating is sought;

(B) Have at least 1,200 hours of flight time, of which 500 hours must be in turbine-powered helicopters;

(C) Have at least 500 hours of flight time in the same type helicopter as the helicopter for which the type rating is sought; or

(D) Have at least 1,000 hours of flight time in at least two different helicopters requiring a type rating.

(4) Subject to the limitation of paragraph (h)(5) of this section, an applicant who does not meet the requirements of paragraph (h)(3) of this section may complete all training and testing (except for preflight inspection) for an additional rating if—

(i) The flight simulator is approved as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.161 of this part and, since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the additional rating, has logged—

(A) At least 100 hours of flight time in helicopters; and

(B) At least 15 hours of flight time in helicopters of the same type of helicopter for which the type rating is sought.

(5) An applicant meeting only the requirements of paragraph (h)(4)(ii) (A) and (B) of this section will be issued an additional rating or an airline transport pilot certificate with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(6) An applicant who has been issued a certificate with the limitation specified in paragraph (h)(5) of this section—

(i) May not act as pilot in command of the helicopter for which an additional rating was obtained under the provisions of this section until the limitation is removed from the certificate; and

(ii) May have the limitation removed by accomplishing 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in a helicopter of the same type for which the limitation applies.

(7) An applicant who does not meet the requirements of paragraph (h)(3)(ii) (A) through (D), or (h)(4)(ii) (A) and (B) of this section may be issued an airline transport pilot certificate or an additional rating to that pilot certificate after successful completion of one of the following requirements—

(i) An approved course at a part 142 training center that includes all training and testing for that certificate or rating, followed by training and testing on the following tasks, which must be successfully completed on a static aircraft or in flight, as appropriate—

(A) Preflight inspection;

(B) Normal takeoff from a hover;

(C) Manually flown precision approach; and

(D) Steep approach and landing to an off-airport heliport; or

(ii) An approved course at a training center that includes all training and testing for that certificate or rating and compliance with paragraphs (h)(8) and (h)(9) of this section.

(8) An applicant meeting only the requirements of paragraph (h)(7) of this section will be issued an additional rating or an airline transport pilot certificate with an additional rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(9) An applicant issued a certificate with the limitation specified in paragraph (h)(8) of this section—

(i) May not act as pilot in command of the aircraft for which an additional rating was obtained under the provisions of this section until the

limitation is removed from the certificate; and

(ii) May have the limitation removed by accomplishing 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type for which the limitation applies.

(i) *Use of an approved flight simulator or approved flight training device for a powered-lift rating.* If an approved flight simulator or approved flight training device is used for accomplishing any of the training and the required practical test for an airline transport pilot certificate with a powered-lift category rating and type rating, if applicable, the applicant, approved flight simulator, and approved flight training device are subject to the following requirements:

(1) The approved flight simulator and approved flight training device must represent that powered-lift type, if the rating involves a type rating in a powered-lift, or is representative of a powered-lift if the applicant is only seeking a powered-lift category rating and does not require a type rating.

(2) The approved flight simulator and approved flight training device must be used in accordance with an approved course at a training center certificated under part 142 of this chapter.

(3) All training and testing requirements (except preflight inspection) must be accomplished by the applicant to receive a powered-lift category rating and type rating, if applicable, without limitations; and—

(i) The flight simulator must be approved as Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.163 of this part and at least one of the following—

(A) Hold a type rating for a turbine-powered powered-lift, or have been designated by a military service as a pilot in command of a turbine-powered powered-lift, if a turbine-powered powered-lift type rating is sought;

(B) Have at least 1,200 hours of flight time, of which 500 hours must be in turbine-powered powered-lifts;

(C) Have at least 500 hours of flight time in the same type of powered-lift for which the type rating is sought; or

(D) Have at least 1,000 hours of flight time in at least two different powered-lifts requiring a type rating.

(4) Subject to the limitation of paragraph (i)(5) of this section, an applicant who does not meet the requirements of paragraph (i)(3) of this section may complete all training and testing (except for preflight inspection) for an additional rating if—

(i) The flight simulator is approved as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.163 of this part and, since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the additional rating, has logged—

(A) At least 100 hours of flight time in powered-lifts; and

(B) At least 15 hours of flight time in powered-lifts of the same type of powered-lift for the type rating sought.

(5) An applicant meeting only the requirements of paragraph (i)(4)(ii) (A) and (B) of this section will be issued an additional rating or an airline transport pilot certificate with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(6) An applicant who has been issued a certificate with the limitation specified in paragraph (i)(5) of this section—

(i) May not act as pilot in command of the powered-lift for which an additional rating was obtained under the provisions of this section until the limitation is removed from the certificate; and

(ii) May have the limitation removed by accomplishing 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in a powered-lift of the same type for which the limitation applies.

(7) An applicant who does not meet the requirements of paragraph (i)(3)(ii) (A) through (D) or (i)(4)(ii) (A) and (B) of this section may be issued an airline transport pilot certificate or an additional rating to that pilot certificate after successful completion of one of the following requirements—

(i) An approved course at a part 142 training center that includes all training and testing for that certificate or rating, followed by training and testing on the following tasks, which must be successfully completed on a static aircraft or in flight, as appropriate—

(A) Preflight inspection;

(B) Normal takeoff from a hover;

(C) Manually flown precision approach; and

(D) Steep approach and landing to an off-airport site; or

(ii) An approved course at a training center that includes all training and testing for that certificate or rating and is in compliance with paragraphs (i)(8) and (i)(9) of this section.

(8) An applicant meeting only the requirements of paragraph (i)(7) of this section will be issued an additional rating or an airline transport pilot certificate with an additional rating, as applicable, with a limitation. The limitation shall state: ''This certificate is subject to pilot-in-command limitations for the additional rating.''

(9) An applicant issued a pilot certificate with the limitation specified in paragraph (i)(8) of this section—

(i) May not act as pilot in command of the aircraft for which an additional rating was obtained under the provisions of this section until the limitation is removed from the certificate; and

(ii) May have the limitation removed by accomplishing 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in a powered-lift of the same type for which the limitation applies.

(j) *Waiver authority.* Unless the Administrator requires certain or all tasks to be performed, the examiner who conducts the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

§ 61.158 [Reserved]

§ 61.159 Aeronautical experience: Airplane category rating.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a person who is applying for an airline transport pilot certificate with an airplane category and class rating must have at least 1,500 hours of total time as a pilot that includes at least:

(1) 500 hours of cross-country flight time.

(2) 100 hours of night flight time.

(3) 75 hours of instrument flight time, in actual or simulated instrument conditions, subject to the following:

(i) Except as provided in paragraph (a)(3)(ii) of this section, an applicant may not receive credit for more than a total of 25 hours of simulated instrument time in an approved flight simulator or approved flight training device.

(ii) A maximum of 50 hours of training in an approved flight simulator or approved flight training device may be credited toward the instrument flight time requirements of paragraph (a)(3) of this section if the training was accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(iii) Training in a flight simulator or flight training device must be

accomplished in an approved flight simulator or approved flight training device, representing an airplane.

(4) 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties and functions of a pilot in command while under the supervision of a pilot in command or any combination thereof, which includes at least—

(i) 100 hours of cross-country flight time; and

(ii) 25 hours of night flight time.

(5) Not more than 100 hours of the total aeronautical experience requirements of paragraph (a) of this section may be obtained in an approved flight simulator or approved flight training device that represents an airplane, provided the aeronautical experience was obtained in an approved course conducted by a training center certificated under part 142 of this chapter.

(b) A person who has performed at least 20 night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section; however, not more than 25 hours of night flight time may be credited in this manner.

(c) A commercial pilot may credit the following second-in-command flight time or flight-engineer flight time toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section:

(1) second in command time, provided the time is acquired in an airplane—

(i) Required to have more than one pilot by the airplane's flight manual, type certificate, or the regulations under which the flight is being conducted;

(ii) Engaged in operations under part 121 or part 135 of this chapter for which a second in command is required; or

(iii) That is required by the operating rules of this chapter to have more than one pilot.

(2) Flight-engineer time, provided the time—

(i) Is acquired in an airplane required to have a flight engineer by the airplane's flight manual or type certificate;

(ii) Is acquired while engaged in operations under part 121 of this chapter for which a flight engineer is required;

(iii) Is acquired while the person is participating in a pilot training program approved under part 121 of this chapter; and

(iv) Does not exceed more than 1 hour for each 3 hours of flight engineer flight time for a total credited time of no more than 500 hours.

(d) An applicant may be issued an airline transport pilot certificate with the endorsement, ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO,'' as prescribed by Article 39 of the Convention on International Civil Aviation, if the applicant:

(1) Credits second in command or flight-engineer time under paragraph (c) of this section toward the 1,500 hours total flight time requirement of paragraph (a) of this section;

(2) Does not have at least 1,200 hours of flight time as a pilot, including no more than 50 percent of his or her second in command time and none of his or her flight-engineer time; and

(3) Otherwise meets the requirements of paragraph (a) of this section.

(e) When the applicant specified in paragraph (d) of this section presents satisfactory evidence of the accumulation of 1,200 hours of flight time as a pilot including no more than 50 percent of his or her second-in-command flight time and none of his or her flight-engineer time, the applicant is entitled to an airline transport pilot certificate without the endorsement prescribed in that paragraph.

§ 61.161 Aeronautical experience: Rotorcraft category and helicopter class rating.

(a) A person who is applying for an airline transport pilot certificate with a rotorcraft category and helicopter class rating, must have at least 1,200 hours of total time as a pilot that includes at least:

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time, of which 15 hours are in helicopters;

(3) 200 hours of flight time in helicopters, which includes at least 75 hours as a pilot in command, or as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof; and

(4) 75 hours of instrument flight time in actual or simulated instrument meteorological conditions, of which at least 50 hours are obtained in flight with at least 25 hours in helicopters as a pilot in command, or as second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof.

(b) Training in an approved flight simulator or approved flight training device may be credited toward the instrument flight time requirements of paragraph (a)(4) of this section, subject to the following:

(1) Training in a flight simulator or a flight training device must be accomplished in an approved flight simulator or approved flight training device that represents a rotorcraft.

(2) Except as provided in paragraph (b)(3) of this section, an applicant may receive credit for not more than a total of 25 hours of simulated instrument time in an approved flight simulator and approved flight training device.

(3) A maximum of 50 hours of training in an approved flight simulator or approved flight training device may be credited toward the instrument flight time requirements of paragraph (a)(4) of this section if the aeronautical experience is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

§ 61.163 Aeronautical experience: Powered-lift category rating.

(a) A person who is applying for an airline transport pilot certificate with a powered-lift category rating must have at least 1,500 hours of total time as a pilot that includes at least:

(1) 500 hours of cross-country flight time;

(2) 100 hours of night flight time;

(3) 250 hours in a powered-lift as a pilot in command, or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least:

(i) 100 hours of cross-country flight time; and

(ii) 25 hours of night flight time.

(4) 75 hours of instrument flight time in actual or simulated instrument conditions, subject to the following:

(i) Except as provided in paragraph (a)(4)(ii) of this section, an applicant may not receive credit for more than a total of 25 hours of simulated instrument time in an approved flight simulator or approved flight training device.

(ii) A maximum of 50 hours of training in an approved flight simulator or approved flight training device may be credited toward the instrument flight time requirements of paragraph (a)(4) of this section if the training was accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(iii) Training in a flight simulator or flight training device must be accomplished in an approved flight simulator or approved flight training device that represents a powered-lift.

(b) Not more than 100 hours of the total aeronautical experience

requirements of paragraph (a) of this section may be obtained in an approved flight simulator or approved flight training device that represents a powered-lift, provided the aeronautical experience was obtained in an approved course conducted by a training center certificated under part 142 of this chapter.

§ 61.165 Additional aircraft category and class ratings.

(a) *Rotorcraft category and helicopter class rating.* A person applying for an airline transport certificate with a rotorcraft category and helicopter class rating who holds an airline transport pilot certificate with another aircraft category rating must:

(1) Meet the eligibility requirements of § 61.153 of this part;

(2) Pass a knowledge test on the aeronautical knowledge areas of § 61.155(c) of this part;

(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;

(4) Meet the applicable aeronautical experience requirements of § 61.161 of this part; and

(5) Pass the practical test on the areas of operation of § 61.157(e)(4) of this part.

(b) *Airplane category rating with a single-engine class rating.* A person applying for an airline transport certificate with an airplane category and single-engine class rating who holds an airline transport pilot certificate with another aircraft category or class rating must:

(1) Meet the eligibility requirements of § 61.153 of this part;

(2) Pass a knowledge test on the aeronautical knowledge areas of § 61.155(c) of this part;

(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;

(4) Meet the applicable aeronautical experience requirements of § 61.159 of this part; and

(5) Pass the practical test on the areas of operation of § 61.157(e)(1) of this part.

(c) *Airplane category rating with a multiengine class rating.* A person applying for an airline transport certificate with an airplane category and multiengine class rating who holds an airline transport certificate with another aircraft category or class rating must:

(1) Meet the eligibility requirements of § 61.153 of this part;

(2) Pass a knowledge test on the aeronautical knowledge areas of § 61.155(c) of this part;

(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;

(4) Meet the applicable aeronautical experience requirements of § 61.159 of this part; and

(5) Pass the practical test on the areas of operation of § 61.157(e)(2) of this part.

(d) *Powered-lift category.* A person applying for an airline transport pilot certificate with a powered-lift category rating who holds an airline transport certificate with another aircraft category rating must:

(1) Meet the eligibility requirements of § 61.153 of this part;

(2) Pass a required knowledge test on the aeronautical knowledge areas of § 61.155(c) of this part;

(3) Comply with the requirements in § 61.157(b) of this part, if appropriate;

(4) Meet the applicable aeronautical experience requirements of § 61.163 of this part; and

(5) Pass the required practical test on the areas of operation of § 61.157(e)(3) of this part.

§ 61.167 Privileges.

(a) A person who holds an airline transport pilot certificate is entitled to the same privileges as those afforded a person who holds a commercial pilot certificate with an instrument rating.

(b) An airline transport pilot may instruct—

(1) Other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated and endorse the logbook or other training record of the person to whom training has been given;

(2) In approved flight simulators, and approved flight training devices representing the aircraft referenced in paragraph (b)(1) of this section, when instructing under the provisions of this section and endorse the logbook or other training record of the person to whom training has been given;

(3) Only as provided in this section, unless the airline transport pilot also holds a flight instructor certificate, in which case the holder may exercise the instructor privileges of subpart H of part 61 for which he or she is rated; and

(4) In an aircraft, only if the aircraft has functioning dual controls, when instructing under the provisions of this section.

(c) Excluding briefings and debriefings, an airline transport pilot may not instruct in aircraft, approved flight simulators, and approved flight training devices under this section—

(1) For more than 8 hours in any 24-consecutive-hour period; or

(2) For more than 36 hours in any 7-consecutive-day period.

(d) An airline transport pilot may not instruct in Category II or Category III operations unless he or she has been trained and successfully tested under Category II or Category III operations, as applicable.

§ 61.161—69.171 [Reserved]

Subpart H—Flight Instructors

§ 61.181 Applicability.

This subpart prescribes the requirements for the issuance of flight instructor certificates and ratings, the conditions under which those certificates and ratings are necessary, and the limitations on those certificates and ratings.

§ 61.183 Eligibility requirements.

To be eligible for a flight instructor certificate or rating a person must:

(a) Be at least 18 years of age;

(b) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's flight instructor certificate as are necessary;

(c) Hold either a commercial pilot certificate or airline transport pilot certificate with:

(1) An aircraft category and class rating that is appropriate to the flight instructor rating sought; and

(2) An instrument rating, if the person holds a commercial pilot certificate that is appropriate to the flight instructor rating sought, if applying for—

(i) A flight instructor certificate with an airplane category and single-engine class rating;

(ii) A flight instructor certificate with an airplane category and multiengine class rating;

(iii) A flight instructor certificate with a powered-lift rating; or

(iv) A flight instructor certificate with an instrument rating.

(d) Receive a logbook endorsement from an authorized instructor on the fundamentals of instructing listed in § 61.185 of this part appropriate to the required knowledge test;

(e) Pass a knowledge test on the areas listed in § 61.185(a) of this part, unless the applicant:

(1) Holds a flight instructor certificate or ground instructor certificate issued under this part;

(2) Holds a current teacher's certificate issued by a State, county, city, or municipality that authorizes the person to teach at an educational level of the 7th grade or higher; or

(3) Is employed as a teacher at an accredited college or university.

(f) Pass a knowledge test on the aeronautical knowledge areas listed in § 61.185(a)(2) and (a)(3) of this part that are appropriate to the flight instructor rating sought;

(g) Receive a logbook endorsement from an authorized instructor on the areas of operation listed in § 61.187(b) of this part, appropriate to the flight instructor rating sought;

(h) Pass the required practical test that is appropriate to the flight instructor rating sought in an:

(1) Aircraft that is representative of the category and class of aircraft for the aircraft rating sought; or

(2) Approved flight simulator or approved flight training device that is representative of the category and class of aircraft for the rating sought, and used in accordance with an approved course at a training center certificated under part 142 of this chapter.

(i) Accomplish the following for a flight instructor certificate with an airplane or a glider rating:

(1) Receive a logbook endorsement from an authorized instructor indicating that the applicant is competent and possesses instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures after providing the applicant with flight training in those training areas in an airplane or glider, as appropriate, that is certificated for spins; and

(2) Demonstrate instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures. However, upon presentation of the endorsement specified in paragraph (i)(1) of this section an examiner may accept that endorsement as satisfactory evidence of instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures for the practical test, provided that the practical test is not a retest as a result of the applicant failing the previous test for deficiencies in the knowledge or skill of stall awareness, spin entry, spins, or spin recovery instructional procedures. If the retest is a result of deficiencies in the ability of an applicant to demonstrate knowledge or skill of stall awareness, spin entry, spins, or spin recovery instructional procedures, the examiner must test the person on stall awareness, spin entry, spins, and spin recovery instructional procedures in an airplane or glider, as appropriate, that is certificated for spins;

(j) Log at least 15 hours as pilot in command in the category and class of aircraft that is appropriate to the flight instructor rating sought; and

(k) Comply with the appropriate sections of this part that apply to the flight instructor rating sought.

§ 61.185 Aeronautical knowledge.

(a) A person who is applying for a flight instructor certificate must receive and log ground training from an authorized instructor on:

(1) Except as provided in paragraph (b) of this section, the fundamentals of instructing, including:

(i) The learning process;

(ii) Elements of effective teaching;

(iii) Student evaluation and testing;

(iv) Course development;

(v) Lesson planning; and

(vi) Classroom training techniques.

(2) The aeronautical knowledge areas for a recreational, private, and commercial pilot certificate applicable to the aircraft category for which flight instructor privileges are sought; and

(3) The aeronautical knowledge areas for the instrument rating applicable to the category for which instrument flight instructor privileges are sought.

(b) The following applicants do not need to comply with paragraph (a) of this section:

(1) The holder of a flight instructor certificate or ground instructor certificate issued under this part;

(2) The holder of a current teacher's certificate issued by a State, county, city, or municipality that authorizes the person to teach at an educational level of the 7th grade or higher; or

(3) A person employed as a teacher at an accredited college or university.

§ 61.187 Flight proficiency.

(a) *General.* A person who is applying for a flight instructor certificate must receive and log flight and ground training from an authorized instructor on the areas of operation listed in this section that apply to the flight instructor rating sought. The applicant's logbook must contain an endorsement from an authorized instructor certifying that the person is proficient to pass a practical test on those areas of operation.

(b) *Areas of operation.* (1) *For an airplane category rating with a single-engine class rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport and seaplane base operations;

(vii) Takeoffs, landings, and go-arounds;

(viii) Fundamentals of flight;

(ix) Performance maneuvers;

(x) Ground reference maneuvers;

(xi) Slow flight, stalls, and spins;

(xii) Basic instrument maneuvers;

(xiii) Emergency operations; and

(xiv) Postflight procedures.

(2) *For an airplane category rating with a multiengine class rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport and seaplane base operations;

(vii) Takeoffs, landings, and go-arounds;

(viii) Fundamentals of flight;

(ix) Performance maneuvers;

(x) Ground reference maneuvers;

(xi) Slow flight and stalls;

(xii) Basic instrument maneuvers;

(xiii) Emergency operations;

(xiv) Multiengine operations; and

(xv) Postflight procedures.

(3) *For a rotorcraft category rating with a helicopter class rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport and heliport operations;

(vii) Hovering maneuvers;

(viii) Takeoffs, landings, and go-arounds;

(ix) Fundamentals of flight;

(x) Performance maneuvers;

(xi) Emergency operations;

(xii) Special operations; and

(xiii) Postflight procedures.

(4) *For a rotorcraft category rating with a gyroplane class rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport operations;

(vii) Takeoffs, landings, and go-arounds;

(viii) Fundamentals of flight;

(ix) Performance maneuvers;

(x) Flight at slow airspeeds;

(xi) Ground reference maneuvers;

(xii) Emergency operations; and

(xiii) Postflight procedures.

(5) *For a powered-lift category rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport and heliport operations;

(vii) Hovering maneuvers;

(viii) Takeoffs, landings, and go-arounds;

(ix) Fundamentals of flight;

(x) Performance maneuvers;

(xi) Ground reference maneuvers;

(xii) Slow flight and stalls;

(xiii) Basic instrument maneuvers;

(xiv) Emergency operations;

(xv) Special operations; and

(xvi) Postflight procedures.

(6) *For a glider category rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport and gliderport operations;

(vii) Launches, landings, and go-arounds;

(viii) Fundamentals of flight;

(ix) Performance speeds;

(x) Soaring techniques;

(xi) Performance maneuvers;

(xii) Slow flight, stalls, and spins;

(xiii) Emergency operations; and

(xiv) Postflight procedures.

(7) *For an instrument rating with the appropriate aircraft category and class rating:* (i) Fundamentals of instructing;

(ii) Technical subject areas;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Air traffic control clearances and procedures;

(vi) Flight by reference to instruments;

(vii) Navigation aids;

(viii) Instrument approach procedures;

(ix) Emergency operations; and

(x) Postflight procedures.

(c) The flight training required by this section may be accomplished:

(1) In an aircraft that is representative of the category and class of aircraft for the rating sought; or

(2) In an approved flight simulator or approved flight training device representative of the category and class of aircraft for the rating sought, and used in accordance with an approved course at a training center certificated under part 142 of this chapter.

§ 61.189 Flight instructor records.

(a) A flight instructor must sign the logbook of each person to whom that instructor has given flight training or ground training.

(b) A flight instructor must maintain a record in a logbook or a separate document that contains the following:

(1) The name of each person whose logbook or student pilot certificate that instructor has endorsed for solo flight privileges, and the date of the endorsement; and

(2) The name of each person that instructor has endorsed for a knowledge test or practical test, and the record shall also indicate the kind of test, the date, and the results.

(c) Each flight instructor must retain the records required by this section for at least 3 years.

§ 61.191 Additional flight instructor ratings.

(a) A person who applies for an additional flight instructor rating on a flight instructor certificate must meet the eligibility requirements listed in § 61.183 of this part that apply to the flight instructor rating sought.

(b) A person who applies for an additional rating on a flight instructor certificate is not required to pass the knowledge test on the areas listed in § 61.185(a) of this part.

§ 61.193 Flight instructor privileges.

A person who holds a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and ratings, and that person's pilot certificate and ratings, to give training and endorsements that are required for, and relate to:

(a) A student pilot certificate;

(b) A pilot certificate;

(c) A flight instructor certificate;

(d) A ground instructor certificate;

(e) An aircraft rating;

(f) An instrument rating;

(g) A flight review, operating privilege, or recency of experience requirement of this part;

(h) A practical test; and

(i) A knowledge test.

§ 61.195 Flight instructor limitations and qualifications.

A person who holds a flight instructor certificate is subject to the following limitations:

(a) *Hours of training.* In any 24-consecutive-hour period, a flight instructor may not conduct more than 8 hours of flight training.

(b) *Aircraft ratings.* A flight instructor may not conduct flight training in any aircraft for which the flight instructor does not hold:

(1) A pilot certificate and flight instructor certificate with the applicable category and class rating; and

(2) If appropriate, a type rating.

(c) *Instrument Rating.* A flight instructor who provides instrument flight training for the issuance of an instrument rating or a type rating not limited to VFR must hold an instrument rating on his or her flight instructor certificate and pilot certificate that is appropriate to the category and class of aircraft in which instrument training is being provided.

(d) *Limitations on endorsements.* A flight instructor may not endorse a:

(1) Student pilot's certificate or logbook for solo flight privileges, unless that flight instructor has—

(i) Given that student the flight training required for solo flight privileges required by this part; and

(ii) Determined that the student is prepared to conduct the flight safely under known circumstances, subject to any limitations listed in the student's logbook that the instructor considers necessary for the safety of the flight.

(2) Student pilot's certificate and logbook for a solo cross-country flight, unless that flight instructor has determined the student's flight preparation, planning, equipment, and proposed procedures are adequate for the proposed flight under the existing conditions and within any limitations listed in the logbook that the instructor considers necessary for the safety of the flight;

(3) Student pilot's certificate and logbook for solo flight in a Class B airspace area or at an airport within Class B airspace unless that flight instructor has—

(i) Given that student ground and flight training in that Class B airspace or at that airport; and

(ii) Determined that the student is proficient to operate the aircraft safely.

(4) Logbook of a recreational pilot, unless that flight instructor has—

(i) Given that pilot the ground and flight training required by this part; and

(ii) Determined that the recreational pilot is proficient to operate the aircraft safely.

(5) Logbook of a pilot for a flight review, unless that instructor has conducted a review of that pilot in accordance with the requirements of § 61.56(a) of this part; or

(6) Logbook of a pilot for an instrument proficiency check, unless that instructor has tested that pilot in accordance with the requirements of § 61.57(d) of this part.

(e) *Training in an aircraft that requires a type rating.* A flight instructor may not give flight training in an aircraft that requires the pilot in command to hold a type rating unless the flight instructor holds a type rating for that aircraft on his or her pilot certificate.

(f) *Training received in a multiengine airplane, a helicopter, or a powered-lift.* A flight instructor may not give training required for the issuance of a certificate or rating in a multiengine airplane, a helicopter, or a powered-lift unless that flight instructor has at least 5 flight hours of pilot-in-command time in the specific make and model of multiengine airplane, helicopter, or powered-lift, as appropriate.

(g) *Position in aircraft and required pilot stations for providing flight training.*

(1) A flight instructor must perform all training from in an aircraft that complies with the requirements of § 91.109 of this chapter.

(2) A flight instructor who provides flight training for a pilot certificate or rating issued under this part must provide that flight training in an aircraft that meets the following requirements—

(i) The aircraft must have at least two pilot stations and be of the same category, class, and type, if appropriate, that applies to the pilot certificate or rating sought.

(ii) For single-place aircraft, the pre-solo flight training must have been provided in an aircraft that has two pilot stations and is of the same category, class, and type, if appropriate.

(h) *Qualifications of the flight instructor for training first-time flight instructor applicants.* (1) The ground training provided to an initial applicant for a flight instructor certificate must be given by an authorized instructor who—

(i) Holds a current ground or flight instructor certificate with the appropriate rating, has held that certificate for at least 24 months, and has given at least 40 hours of ground training; or

(ii) Holds a current ground or flight instructor certificate with the appropriate rating, and has given at least 100 hours of ground training in an FAA-approved course.

(2) Except for an instructor who meets the requirements of paragraph (h)(3)(ii) of this section, a flight instructor who provides training to an initial applicant for a flight instructor certificate must—

(i) Meet the eligibility requirements prescribed in § 61.183 of this part;

(ii) Hold the appropriate flight instructor certificate and rating;

(iii) Have held a flight instructor certificate for at least 24 months;

(iv) For training in preparation for an airplane, rotorcraft, or powered-lift rating, have given at least 200 hours of flight training as a flight instructor; and

(v) For training in preparation for a glider rating, have given at least 80 hours of flight training as a flight instructor.

(3) A flight instructor who serves as a flight instructor in an FAA-approved course for the issuance of a flight instructor rating must hold a current flight instructor certificate with the appropriate rating and pass the required initial and recurrent flight instructor proficiency tests, in accordance with the requirements of the part under which the FAA-approved course is conducted, and must—

(i) Meet the requirements of paragraph (h)(2) of this section; or

(ii) Have trained and endorsed at least five applicants for a practical test for a pilot certificate, flight instructor certificate, ground instructor certificate, or an additional rating, and at least 80 percent of those applicants passed that test on their first attempt; and

(A) Given at least 400 hours of flight training as a flight instructor for training in an airplane, a rotorcraft, or for a powered-lift rating; or

(B) Given at least 100 hours of flight training as a flight instructor, for training in a glider rating.

(i) *Prohibition against self-endorsements.* A flight instructor shall not make any self-endorsement for a certificate, rating, flight review, authorization, operating privilege, practical test, or knowledge test that is required by this part.

(j) A flight instructor may not give training in Category II or Category III operations unless the flight instructor has been trained and tested in Category II or Category III operations, pursuant to § 61.67 or § 61.68 of this part, as applicable.

§ 61.197 Renewal of flight instructor certificates.

(a) A person who holds a flight instructor certificate that has not expired may renew that certificate for an additional 24 calendar months if the holder:

(1) Passes a practical test for—

(i) Renewal of the flight instructor certificate; or

(ii) An additional flight instructor rating; or

(2) Presents to an authorized FAA Flight Standards Inspector—

(i) A record of training students that shows during the preceding 24 calendar months the flight instructor has endorsed at least five students for a practical test for a certificate or rating, and at least 80 percent of those students passed that test on the first attempt;

(ii) A record that shows that within the preceding 24 calendar months, the flight instructor has served as a company check pilot, chief flight instructor, company check airman, or flight instructor in a part 121 or part 135 operation, or in a position involving the regular evaluation of pilots, in which that authorized FAA Flight Standards Inspector is acquainted with the duties and responsibilities of the position, and has satisfactory knowledge of its current pilot training, certification, and standards; or

(iii) A graduation certificate showing the person has successfully completed an approved flight instructor refresher course consisting of ground training or flight training, or both, within the 90 days preceding the expiration month of his or her flight instructor certificate.

(b) If a person accomplishes the renewal requirements of paragraph (a)(1) or (a)(2) of this section within the 90 days preceding the expiration month of his or her flight instructor certificate:

(1) That person is considered to have accomplished the renewal requirement of this section in the month due; and

(2) The current flight instructor certificate will be renewed for an additional 24 calendar months from its expiration date.

(c) The practical test required by paragraph (a)(1) of this section may be accomplished in an approved flight simulator or approved flight training device if the test is accomplished pursuant to an approved course conducted by a training center certificated under part 142 of this chapter.

§ 61.199 Expired flight instructor certificates and ratings.

(a) *Flight instructor certificates.* The holder of an expired flight instructor certificate may exchange that certificate for a new certificate by passing a practical test prescribed in § 61.183(h) of this part.

(b) *Flight instructor ratings.* (1) A flight instructor rating or a limited flight instructor rating on a pilot certificate is no longer valid and may not be exchanged for a similar rating or a flight instructor certificate.

(2) The holder of a flight instructor rating or a limited flight instructor rating on a pilot certificate may be issued a flight instructor certificate with the current ratings, but only if the person passes the required knowledge and practical test prescribed in this subpart for the issuance of the current flight instructor certificate and rating.

§ 61.201 [Reserved]

Subpart I—Ground Instructors

§ 61.211 Applicability.

This subpart prescribes the requirements for the issuance of ground instructor certificates and ratings, the conditions under which those certificates and ratings are necessary, and the limitations upon those certificates and ratings.

§ 61.213 Eligibility requirements.

(a) To be eligible for a ground instructor certificate or rating a person must:

(1) Be at least 18 years of age;

(2) Be able to read, write, speak, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, then the Administrator may place such operating limitations on that applicant's ground instructor certificate as are necessary;

(3) Except as provided in paragraph (b) of this section, pass a knowledge test on the fundamentals of instructing to include—

(i) The learning process;

(ii) Elements of effective teaching;

(iii) Student evaluation and testing;

(iv) Course development;

(v) Lesson planning; and

(vi) Classroom training techniques.

(4) Pass a knowledge test on the aeronautical knowledge areas in—

(i) For a basic ground instructor rating, §§ 61.97 and 61.105;

(ii) For an advanced ground instructor rating, §§ 61.97, 61.105, 61.125, and 61.155; and

(iii) For an instrument ground instructor rating, § 61.65.

(b) The knowledge test specified in paragraph (a)(3) of this section is not required if the applicant:

(1) Holds a ground instructor certificate or flight instructor certificate issued under this part;

(2) Holds a current teacher's certificate issued by a State, county, city, or municipality that authorizes the person to teach at an educational level of the 7th grade or higher; or

(3) Is employed as a teacher at an accredited college or university.

§ 61.215 Ground instructor privileges.

(a) A person who holds a basic ground instructor rating is authorized to provide:

(1) Ground training in the aeronautical knowledge areas required for the issuance of a recreational pilot certificate, private pilot certificate, or associated ratings under this part;

(2) Ground training required for a recreational pilot and private pilot flight review; and

(3) A recommendation for a knowledge test required for the issuance of a recreational pilot certificate or private pilot certificate under this part.

(b) A person who holds an advanced ground instructor rating is authorized to provide:

(1) Ground training in the aeronautical knowledge areas required for the issuance of any certificate or rating under this part;

(2) Ground training required for any flight review; and

(3) A recommendation for a knowledge test required for the issuance of any certificate under this part.

(c) A person who holds an instrument ground instructor rating is authorized to provide:

(1) Ground training in the aeronautical knowledge areas required for the issuance of an instrument rating under this part;

(2) Ground training required for an instrument proficiency check; and

(3) A recommendation for a knowledge test required for the issuance of an instrument rating under this part.

(d) A person who holds a ground instructor certificate is authorized, within the limitations of the ratings on the ground instructor certificate, to endorse the logbook or other training record of a person to whom the holder has provided the training or recommendation specified in paragraphs (a) through (c) of this section.

§ 61.217 Currency requirements.

The holder of a ground instructor certificate may not perform the duties of a ground instructor unless, within the preceding 12 months:

(a) The person has served for at least 3 months as a ground instructor; or

(b) The Administrator has determined that the person meets the standards prescribed in this part for the certificate and rating.

4. Part 141 is revised to read as follows:

PART 141—PILOT SCHOOLS

Subpart A—General

Subpart B—Personnel, Aircraft, and Facilities Requirements

Subpart C—Training Course Outline and Curriculum

Subpart D—Examining Authority

Subpart E—Operating Rules

Subpart F—Records

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

Subpart A—General

§ 141.1 Applicability.

This part prescribes the requirements for issuing pilot school certificates, provisional pilot school certificates, and associated ratings, and the general operating rules applicable to a holder of a certificate or rating issued under this part.

§ 141.3 Certificate required.

No person may operate as a certificated pilot school without, or in violation of, a pilot school certificate or provisional pilot school certificate issued under this part.

§ 141.5 Requirements for a pilot school certificate.

An applicant may be issued a pilot school certificate with associated ratings if the applicant:

(a) Completes the application for a pilot school certificate on a form and in a manner prescribed by the Administrator;

(b) Holds a provisional pilot school certificate, issued under this part, for at least 24 calendar months preceding the month in which the application for a pilot school certificate is made;

(c) Meets the applicable requirements of subparts A through C of this part for the school ratings sought; and

(d) Has trained and recommended for pilot certification and rating tests, within 24 calendar months preceding the month the application is made for the pilot school certificate, at least 10 students for a knowledge or practical test for a pilot certificate, flight instructor certificate, ground instructor certificate, an additional rating, an end-of-course test for a training course specified in appendix K of this part, or any combination of those tests, and at least 80 percent of all tests administered were passed on the first attempt.

§ 141.7 Provisional pilot school certificate.

An applicant that meets the applicable requirements of subparts A, B, and C of this part, but does not meet the recent training activity requirements of § 141.5(d) of this part, may be issued a provisional pilot school certificate with ratings.

§ 141.9 Examining authority.

An applicant is issued examining authority for its pilot school certificate if the applicant meets the requirements of subpart D of this part.

§ 141.11 Pilot school ratings.

(a) The ratings listed in paragraph (b) of this section may be issued to an applicant for:

(1) A pilot school certificate, provided the applicant meets the requirements of § 141.5 of this part; or

(2) A provisional pilot school certificate, provided the applicant meets the requirements of § 141.7 of this part.

(b) An applicant may be authorized to conduct the following courses:

(1) *Certification and rating courses.* (Appendixes A through J).

(i) Recreational pilot course.

(ii) Private pilot course.

(iii) Commercial pilot course.

(iv) Instrument rating course.

(v) Airline transport pilot course.

(vi) Flight instructor course.

(vii) Flight instructor instrument course.

(viii) Ground instructor course.

(ix) Additional aircraft category or class rating course.

(x) Aircraft type rating course.

(2) *Special preparation courses.* (Appendix K).

(i) Pilot refresher course.

(ii) Flight instructor refresher course.

(iii) Ground instructor refresher course.

(iv) Agricultural aircraft operations course.

(v) Rotorcraft external-load operations course.

(vi) Special operations course.

(vii) Test pilot course.

(3) *Pilot ground school course.* (Appendix L).

§ 141.13 Application for issuance, amendment, or renewal.

(a) Application for an original certificate and rating, an additional rating, or the renewal of a certificate under this part must be made on a form and in a manner prescribed by the Administrator.

(b) Application for the issuance or amendment of a certificate or rating must be accompanied by two copies of each proposed training course curriculum for which approval is sought.

§ 141.15 Location of facilities.

The holder of a pilot school certificate or a provisional pilot school certificate may have a base or other facilities located outside the United States, provided the Administrator determines the location of the base and facilities at that place are needed for the training of students who are citizens of the United States.

§ 141.17 Duration of certificate and examining authority.

(a) Unless surrendered, suspended, or revoked, a pilot school's certificate or a provisional pilot school's certificate expires:

(1) On the last day of the 24th calendar month from the month the certificate was issued;

(2) Except as provided in paragraph (b) of this section, on the date that any change in ownership of the school occurs;

(3) On the date of any change in the facilities upon which the school's certificate is based occurs; or

(4) Upon notice by the Administrator that the school has failed for more than 60 days to maintain the facilities, aircraft, or personnel required for any one of the school's approved training courses.

(b) A change in the ownership of a pilot school or provisional pilot school does not terminate that school's certificate if, within 30 days after the date that any change in ownership of the school occurs:

(1) Application is made for an appropriate amendment to the certificate; and

(2) No change in the facilities, personnel, or approved training courses is involved.

(c) An examining authority issued to the holder of a pilot school certificate expires on the date that the pilot school certificate expires, or is surrendered, suspended, or revoked.

§ 141.18 Carriage of narcotic drugs, marijuana, and depressant or stimulant drugs or substances.

If the holder of a certificate issued under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

§ 141.19 Display of certificate.

(a) Each holder of a pilot school certificate or a provisional pilot school certificate must display that certificate in a place in the school that is normally accessible to the public and is not obscured.

(b) A certificate must be made available for inspection upon request by:

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) A Federal, State, or local law enforcement officer.

§ 141.21 Inspections.

Each holder of a certificate issued under this part must allow the Administrator to inspect its personnel, facilities, equipment, and records to determine the certificate holder's:

(a) Eligibility to hold its certificate;

(b) Compliance with 49 U.S.C. 40101 *et seq.*, formerly the Federal Aviation Act of 1958, as amended; and

(c) Compliance with the Federal Aviation Regulations.

§ 141.23 Advertising limitations.

(a) The holder of a pilot school certificate or a provisional pilot school certificate may not make any statement relating to its certification and ratings that is false or designed to mislead any person contemplating enrollment in that school.

(b) The holder of a pilot school certificate or a provisional pilot school certificate may not advertise that the school is certificated unless it clearly differentiates between courses that have been approved under part 141 of this chapter and those that have not been approved under part 141 of this chapter.

(c) The holder of a pilot school certificate or a provisional pilot school certificate must promptly remove:

(1) From vacated premises, all signs indicating that the school was certificated by the Administrator; or

(2) All indications (including signs), wherever located, that the school is certificated by the Administrator when its certificate has expired or has been surrendered, suspended, or revoked.

§ 141.25 Business office and operations base.

(a) Each holder of a pilot school or a provisional pilot school certificate must maintain a principal business office with a mailing address in the name shown on its certificate.

(b) The facilities and equipment at the principal business office must be adequate to maintain the files and records required to operate the business of the school.

(c) The principal business office may not be shared with, or used by, another pilot school.

(d) Before changing the location of the principal business office or the operations base, each certificate holder must notify the FAA Flight Standards District Office having jurisdiction over the area of the new location, and the notice must be:

(1) Submitted in writing at least 30 days before the change of location; and

(2) Accompanied by any amendments needed for the certificate holder's approved training course outline.

(e) A certificate holder may conduct training at an operations base other than the one specified in its certificate, if:

(1) The Administrator has inspected and approved the base for use by the certificate holder; and

(2) The course of training and any needed amendments have been approved for use at that base.

§ 141.26 Training agreements.

A training center certificated under part 142 of this chapter may provide the training, testing, and checking for pilot schools certificated under part 141 of this chapter, and is considered to meet the requirements of part 141, provided—

(a) There is a training agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated training center is approved and conducted under part 142;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the training, testing, and checking to be conducted under part 141 and the training, testing, and checking to be conducted under part 142; and

(d) Upon completion of the training, testing, and checking conducted under part 142, a copy of each student's training record is forwarded to the part 141 school and becomes part of the student's permanent training record.

§ 141.27 Renewal of certificates and ratings.

(a) *Pilot school.* (1) A pilot school may apply for renewal of its school certificate and ratings within 30 days preceding the month the pilot school's certificate expires, provided the school meets the requirements prescribed in paragraph (a)(2) of this section for renewal of its certificate and ratings.

(2) A pilot school may have its school certificate and ratings renewed for an additional 24 calendar months if the Administrator determines the school's personnel, aircraft, facility and airport, approved training courses, training records, and recent training ability and quality meet the requirements of this part.

(3) A pilot school that does not meet the renewal requirements in paragraph (a)(2) of this section, may apply for a provisional pilot school certificate if the school meets the requirements of § 141.7 of this part.

(b) *Provisional pilot school.* (1) Except as provided in paragraph (b)(3) of this section, a provisional pilot school may not have its provisional pilot school certificate or the ratings on that certificate renewed.

(2) A provisional pilot school may apply for a pilot school certificate and associated ratings provided that school meets the requirements of § 141.5 of this part.

(3) A former provisional pilot school may apply for another provisional pilot school certificate, provided 180 days have elapsed since its last provisional pilot school certificate expired.

§ 141.29 [Reserved]

Subpart B—Personnel, Aircraft, and Facilities Requirements

§ 141.31 Applicability.

(a) This subpart prescribes:

(1) The personnel and aircraft requirements for a pilot school certificate or a provisional pilot school certificate; and

(2) The facilities that a pilot school or provisional pilot school must have available on a continuous basis.

(b) As used in this subpart, to have continuous use of a facility, including an airport, the school must have:

(1) Ownership of the facility or airport for at least 6 calendar months at the time of application for initial certification and on the date of renewal of the school's certificate; or

(2) A written lease agreement for the facility or airport for at least 6 calendar months at the time of application for initial certification and on the date of renewal of the school's certificate.

§ 141.33 Personnel.

(a) An applicant for a pilot school certificate or for a provisional pilot school certificate must meet the following personnel requirements:

(1) Each applicant must have adequate personnel, including certificated flight instructors, certificated ground instructors, or holders of a commercial pilot certificate with a lighter-than-air rating, and a chief instructor for each approved course of training who is qualified and competent to perform the duties to which that instructor is assigned.

(2) If the school employs dispatchers, aircraft handlers, and line and service personnel, then it shall instruct those persons in the procedures and responsibilities of their employment.

(3) Each instructor to be used for ground or flight training must hold a flight instructor certificate, ground instructor certificate, or commercial pilot certificate with a lighter-than-air rating, as appropriate, with ratings for the approved course of training and any aircraft used in that course.

(b) An applicant for a pilot school certificate or for a provisional pilot school certificate shall designate a chief instructor for each of the school's approved training courses, who must meet the requirements of § 141.35 of this part.

(c) When necessary, an applicant for a pilot school certificate or for a provisional pilot school certificate may designate a person to be an assistant chief instructor for an approved training course, provided that person meets the requirements of § 141.36 of this part.

(d) A pilot school and a provisional pilot school may designate a person to be a check instructor for conducting student stage checks, end-of-course tests, and instructor proficiency checks, provided:

(1) That person meets the requirements of § 141.37 of this part; and

(2) That school has a student enrollment of at least 50 students at the time designation is sought.

(e) A person, as listed in this section, may serve in more than one position for a school, provided that person is qualified for each position.

§ 141.35 Chief instructor qualifications.

(a) To be eligible for designation as a chief instructor for a course of training, a person must meet the following requirements:

(1) Hold a commercial pilot certificate or an airline transport pilot certificate, and, except for a chief instructor for a course of training solely for a lighter-than-air rating, a current flight instructor certificate. The certificates must contain the appropriate aircraft category, class, and instrument ratings for the category and class of aircraft used in the course;

(2) Meet the pilot in command recent flight experience requirements of § 61.57 of this chapter;

(3) Pass a knowledge test on—

(i) Teaching methods;

(ii) Applicable provisions of the ''Aeronautical Information Manual'';

(iii) Applicable provisions of parts 61, 91, and 141 of this chapter; and

(iv) The objectives and approved course completion standards of the course for which the person seeks to obtain designation.

(4) Pass a proficiency test on instructional skills and ability to train students on the flight procedures and maneuvers appropriate to the course;

(5) Except for a course of training for gliders, balloons, or airships, the chief instructor must meet the applicable requirements in paragraphs (b), (c), and (d) of this section;

(6) A chief instructor for a course of training for gliders or balloons is only required to have 40 percent of the hours required in paragraphs (b) and (d) of this section; and

(7) A chief instructor for a course of training for airships is only required to have 40 percent of the hours required in paragraphs (b), (c), and (d) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, a chief instructor must have:

(1) At least 1,000 hours as pilot in command; and

(2) Primary flight training experience, acquired as either a certificated flight instructor or an instructor in a military pilot flight training program, or a combination thereof, consisting of at least—

(i) 2 years and a total of 500 flight hours; or

(ii) 1,000 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, a chief instructor must have:

(1) At least 100 hours of flight time under actual or simulated instrument conditions;

(2) At least 1,000 hours as pilot in command; and

(3) Instrument flight instructor experience, acquired as either a certificated flight instructor-instrument or an instructor in a military pilot flight training program, or a combination thereof, consisting of at least—

(i) 2 years and a total of 250 flight hours; or

(ii) 400 flight hours.

(d) For a course of training other than those leading to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, a chief instructor must have:

(1) At least 2,000 hours as pilot in command; and

(2) Flight training experience, acquired as either a certificated flight instructor or an instructor in a military pilot flight training program, or a combination thereof, consisting of at least—

(i) 3 years and a total of 1,000 flight hours; or

(ii) 1,500 flight hours.

(e) To be eligible for designation as chief instructor for a ground school course, a person must have 1 year of experience as a ground school instructor at a certificated pilot school.

§ 141.36 Assistant chief instructor qualifications.

(a) To be eligible for designation as an assistant chief instructor for a course of training, a person must meet the following requirements:

(1) Hold a commercial pilot or an airline transport pilot certificate and, except for the assistant chief instructor for a course of training for a lighter-than-air rating, a current flight instructor certificate. The certificates must contain the appropriate aircraft category, class, and instrument ratings for the category and class of aircraft used in the course;

(2) Meet the pilot in command recent flight experience requirements of § 61.57 of this chapter;

(3) Pass a knowledge test on—

(i) Teaching methods;

(ii) Applicable provisions of the ''Aeronautical Information Manual'';

(iii) Applicable provisions of parts 61, 91, and 141 of this chapter; and

(iv) The objectives and approved course completion standards of the course for which the person seeks to obtain designation.

(4) Pass a proficiency test on the flight procedures and maneuvers appropriate to that course; and

(5) Meet the applicable requirements in paragraphs (b), (c), and (d) of this section. However, an assistant chief instructor for a course of training for gliders, balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, an assistant chief instructor must have:

(1) At least 500 hours as pilot in command; and

(2) Flight training experience, acquired as either a certificated flight instructor or an instructor in a military pilot flight training program, or a combination thereof, consisting of at least—

(i) 1 year and a total of 250 flight hours; or

(ii) 500 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have:

(1) At least 50 hours of flight time under actual or simulated instrument conditions;

(2) At least 500 hours as pilot in command; and

(3) Instrument flight instructor experience, acquired as either a certificated flight instructor-instrument or an instructor in a military pilot flight training program, or a combination thereof, consisting of at least—

(i) 1 year and a total of 125 flight hours; or

(ii) 200 flight hours.

(d) For a course of training other than one leading to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, an assistant chief instructor must have:

(1) At least 1,000 hours as pilot in command; and

(2) Flight training experience, acquired as either a certificated flight instructor or an instructor in a military pilot flight training program, or a combination thereof, consisting of at least—

(i) 1½ years and a total of 500 flight hours; or

(ii) 750 flight hours.

(e) To be eligible for designation as an assistant chief instructor for a ground school course, a person must have 6 months of experience as a ground school instructor at a certificated pilot school.

§ 141.37 Check instructor qualifications.

(a) To be designated as a check instructor for conducting student stage checks, end-of-course tests, and instructor proficiency checks under this part, a person must meet the eligibility requirements of this section:

(1) For checks and tests that relate to either flight or ground training, the person must pass a test, given by the chief instructor, on—

(i) Teaching methods;

(ii) Applicable provisions of the ''Aeronautical Information Manual'';

(iii) Applicable provisions of parts 61, 91, and 141 of this chapter; and

(iv) The objectives and course completion standards of the approved training course for the designation sought.

(2) For checks and tests that relate to a flight training course, the person must—

(i) Meet the requirements in paragraph (a)(1) of this section;

(ii) Hold a commercial pilot certificate or an airline transport pilot certificate and, except for a check instructor for a course of training for a lighter-than-air rating, a current flight instructor certificate. The certificates must contain the appropriate aircraft category, class, and instrument ratings for the category and class of aircraft used in the course;

(iii) Meet the pilot in command recent flight experience requirements of § 61.57 of this chapter; and

(iv) Pass a proficiency test, given by the chief instructor or assistant chief instructor, on the flight procedures and maneuvers of the approved training course for the designation sought.

(3) For checks and tests that relate to ground training, the person must—

(i) Meet the requirements in paragraph (a)(1) of this section;

(ii) Except for a course of training for a lighter-than-air rating, hold a current flight instructor certificate or ground instructor certificate with ratings appropriate to the category and class of aircraft used in the course; and

(iii) For a course of training for a lighter-than-air rating, hold a commercial pilot certificate with a lighter-than-air category rating and the appropriate class rating.

(b) A person who meets the eligibility requirements in paragraph (a) of this section must:

(1) Be designated, in writing, by the chief instructor to conduct student stage checks, end-of-course tests, and instructor proficiency checks; and

(2) Be approved by the FAA Flight Standards District Office having jurisdiction over the school.

(c) A check instructor may not conduct a stage check or an end-of-course test of any student for whom the check instructor has:

(1) Served as the principal instructor; or

(2) Recommended for a stage check or end-of-course test.

§ 141.38 Airports.

(a) An applicant for a pilot school certificate or a provisional pilot school certificate must show that he or she has continuous use of each airport at which training flights originate.

(b) Each airport used for airplanes and gliders must have at least one runway or takeoff area that allows training aircraft to make a normal takeoff or landing under the following conditions at the aircraft's maximum certificated takeoff gross weight:

(1) Under wind conditions of not more than 5 miles per hour;

(2) At temperatures equal to the mean high temperature for the hottest month of the year in the operating area;

(3) If applicable, with the powerplant operation, and landing gear and flap operation recommended by the manufacturer; and

(4) In the case of a takeoff—

(i) With smooth transition from liftoff to the best rate of climb speed without exceptional piloting skills or techniques; and

(ii) Clearing all obstacles in the takeoff flight path by at least 50 feet.

(c) Each airport must have a wind direction indicator that is visible from the end of each runway at ground level;

(d) Each airport must have a traffic direction indicator when:

(1) The airport does not have an operating control tower; and

(2) UNICOM advisories are not available.

(e) Except as provided in paragraph (f) of this section, each airport used for night training flights must have permanent runway lights; and

(f) An airport or seaplane base used for night training flights in seaplanes is permitted to use adequate nonpermanent lighting or shoreline lighting, if approved by the Administrator.

§ 141.39 Aircraft.

An applicant for a pilot school certificate or provisional pilot school certificate, and each pilot school or provisional pilot school, must show that each aircraft used by that school for flight training and solo flights meets the following requirements:

(a) Each aircraft must be registered as a civil aircraft in the United States;

(b) Each aircraft must be certificated with a standard airworthiness certificate or a primary airworthiness certificate, unless the Administrator determines that due to the nature of the approved course, an aircraft not having a standard airworthiness certificate or primary airworthiness certificate may be used;

(c) Each aircraft must be maintained and inspected in accordance with the requirements under subpart E of part 91 of this chapter that apply to aircraft operated for hire;

(d) Each aircraft used in flight training must have at least two pilot stations with engine-power controls that can be easily reached and operated in a normal manner from both pilot stations; and

(e) Each aircraft used in a course involving IFR en route operations and instrument approaches must be equipped and maintained for IFR operations. For training in the control and precision maneuvering of an aircraft by reference to instruments, the aircraft may be equipped as provided in the approved course of training.

§ 141.41 Flight simulators, flight training devices, and training aids.

An applicant for a pilot school certificate or a provisional pilot school certificate must show that its flight simulators, flight training devices, training aids, and equipment meet the following requirements:

(a) *Flight simulators.* Each flight simulator used to obtain flight training credit allowed for flight simulators in an approved pilot training course curriculum must—

(1) Be a full-size aircraft cockpit replica of a specific type of aircraft, or make, model, and series of aircraft;

(2) Include the hardware and software necessary to represent the aircraft in ground operations and flight operations;

(3) Use a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Use a visual system that provides at least a 45 degree horizontal field of view and a 30 degree vertical field of view simultaneously for each pilot; and

(5) Have been evaluated, qualified, and approved by the Administrator.

(b) *Flight training devices.* Each flight training device used to obtain flight

training credit allowed for flight training devices in an approved pilot training course curriculum must—

(1) Be a full-size replica of instruments, equipment panels, and controls of an aircraft, or set of aircraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for the systems installed that is necessary to simulate the aircraft in ground and flight operations;

(2) Need not have a force (motion) cueing or visual system; and

(3) Have been evaluated, qualified, and approved by the Administrator.

(c) *Training aids and equipment.* Each training aid, including any audiovisual aid, projector, tape recorder, mockup, chart, or aircraft component listed in the approved training course outline, must be accurate and appropriate to the course for which it is used.

§ 141.43 Pilot briefing areas.

(a) An applicant for a pilot school certificate or provisional pilot school certificate must show that the applicant has continuous use of a briefing area located at each airport at which training flights originate that is:

(1) Adequate to shelter students waiting to engage in their training flights;

(2) Arranged and equipped for the conduct of pilot briefings; and

(3) Except as provided in paragraph (c) of this section, for a school with an instrument rating or commercial pilot course, equipped with private landline or telephone communication to the nearest FAA Flight Service Station.

(b) A briefing area required by paragraph (a) of this section may not be used by the applicant if it is available for use by any other pilot school during the period it is required for use by the applicant.

(c) The communication equipment required by paragraph (a)(3) of this section is not required if the briefing area and the flight service station are located on the same airport, and are readily accessible to each other.

§ 141.45 Ground training facilities.

An applicant for a pilot school or provisional pilot school certificate must show that:

(a) Each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes; and

(b) The training facility is so located that the students in that facility are not distracted by the training conducted in other rooms, or by flight and maintenance operations on the airport.

Subpart C—Training Course Outline and Curriculum

§ 141.51 Applicability.

This subpart prescribes the curriculum and course outline requirements for the issuance of a pilot school certificate or provisional pilot school certificate and ratings.

§ 141.53 Approval procedures for a training course: General.

(a) *General.* An applicant for a pilot school certificate or provisional pilot school certificate must obtain the Administrator's approval of the outline of each training course for which certification and rating is sought.

(b) *Application.* (1) An application for the approval of an initial or amended training course must be submitted in duplicate to the FAA Flight Standards District Office having jurisdiction over the area where the school is based.

(2) An application for the approval of an initial or amended training course must be submitted at least 30 days before any training under that course, or any amendment thereto, is scheduled to begin.

(3) An application for amending a training course must be accompanied by two copies of the amendment.

(c) *Training courses.* (1) A training course submitted for approval prior to August 4, 1997 shall, if approved, retain that approval until 1 year after August 4, 1997.

(2) An applicant for a pilot school certificate or provisional pilot school certificate may request approval of the training courses specified in § 141.11(b) of this part.

§ 141.55 Training course: Contents.

(a) Each training course for which approval is requested must meet the minimum curriculum requirements in accordance with the appropriate appendix of this part.

(b) Except as provided in paragraphs (d) and (e) of this section, each training course for which approval is requested must meet the minimum ground and flight training time requirements in accordance with the appropriate appendix of this part.

(c) Each training course for which approval is requested must contain:

(1) A description of each room used for ground training, including the room's size and the maximum number of students that may be trained in the room at one time;

(2) A description of each type of audiovisual aid, projector, tape recorder, mockup, chart, aircraft component, and other special training aids used for ground training;

(3) A description of each flight simulator or flight training device used for training;

(4) A listing of the airports at which training flights originate and a description of the facilities, including pilot briefing areas that are available for use by the school's students and personnel at each of those airports;

(5) A description of the type of aircraft including any special equipment used for each phase of training;

(6) The minimum qualifications and ratings for each instructor assigned to ground or flight training; and

(7) A training syllabus that includes the following information—

(i) The prerequisites for enrolling in the ground and flight portion of the course that include the pilot certificate and rating (if required by this part), training, pilot experience, and pilot knowledge;

(ii) A detailed description of each lesson, including the lesson's objectives, standards, and planned time for completion;

(iii) A description of what the course is expected to accomplish with regard to student learning;

(iv) The expected accomplishments and the standards for each stage of training; and

(v) A description of the checks and tests to be used to measure a student's accomplishments for each stage of training.

(d) A pilot school may request and receive initial approval for a period of not more than 24 calendar months for any of the training courses of this part without specifying the minimum ground and flight training time requirements of this part, provided the following provisions are met:

(1) The school holds a pilot school certificate issued under this part and has held that certificate for a period of at least 24 consecutive calendar months preceding the month of the request;

(2) In addition to the information required by paragraph (c) of this section, the training course specifies planned ground and flight training time requirements for the course;

(3) The school does not request the training course to be approved for examining authority, nor may that school hold examining authority for that course; and

(4) The practical test or knowledge test for the course is to be given by—

(i) An FAA inspector; or

(ii) An examiner who is not an employee of the school.

(e) A certificated pilot school may request and receive final approval for any of the training courses of this part without specifying the minimum

ground and flight training time requirements of this part, provided the following conditions are met:

(1) The school has held initial approval for that training course for at least 24 calendar months.

(2) The school has—

(i) Trained at least 10 students in that training course within the preceding 24 calendar months and recommended those students for a pilot, flight instructor, or ground instructor certificate or rating; and

(ii) At least 80 percent of those students passed the practical or knowledge test, or any combination thereof, on the first attempt, and that test was given by—

(A) An FAA inspector; or

(B) An examiner who is not an employee of the school.

(3) In addition to the information required by paragraph (c) of this section, the training course specifies planned ground and flight training time requirements for the course.

(4) The school does not request that the training course be approved for examining authority nor may that school hold examining authority for that course.

§ 141.57 Special curricula.

An applicant for a pilot school certificate or provisional pilot school certificate may apply for approval to conduct a special course of airman training for which a curriculum is not prescribed in the appendixes of this part, if the applicant shows that the training course contains features that could achieve a level of pilot proficiency equivalent to that achieved by a training course prescribed in the appendixes of this part or the requirements of part 61 of this chapter.

Subpart D—Examining Authority

§ 141.61 Applicability.

This subpart prescribes the requirements for the issuance of examining authority to the holder of a pilot school certificate, and the privileges and limitations of that examining authority.

§ 141.63 Examining authority qualification requirements.

(a) A pilot school must meet the following prerequisites to receive initial approval for examining authority:

(1) The school must complete the application for examining authority on a form and in a manner prescribed by the Administrator;

(2) The school must hold a pilot school certificate and rating issued under this part;

(3) The school must have held the rating in which examining authority is sought for at least 24 consecutive calendar months preceding the month of application for examining authority;

(4) The training course for which examining authority is requested may not be a course that is approved without meeting the minimum ground and flight training time requirements of this part; and

(5) Within 24 calendar months after the date of application for examining authority, that school must meet the following requirements—

(i) The school must have trained at least 10 students in the training course for which examining authority is sought and recommended those students for a pilot, flight instructor, or ground instructor certificate or rating; and

(ii) At least 90 percent of those students passed the required practical or knowledge test, or any combination thereof, for the pilot, flight instructor, or ground instructor certificate or rating on the first attempt, and that test was given by—

(A) An FAA inspector; or

(B) An examiner who is not an employee of the school.

(b) A pilot school must meet the following requirements to retain approval of its examining authority:

(1) The school must complete the application for renewal of its examining authority on a form and in a manner prescribed by the Administrator;

(2) The school must hold a pilot school certificate and rating issued under this part;

(3) The school must have held the rating for which examining authority is sought for at least 24 calendar months preceding the month of application for renewal of its examining authority; and

(4) The training course for which examining authority is requested may not be a course that is approved without meeting the minimum ground and flight training time requirements of this part.

§ 141.65 Privileges.

A pilot school that holds examining authority may recommend a person who graduated from its course for the appropriate pilot, flight instructor, or ground instructor certificate or rating without taking the FAA knowledge test or practical test in accordance with the provisions of this subpart.

§ 141.67 Limitations and reports.

A pilot school that holds examining authority may only recommend the issuance of a pilot, flight instructor, or ground instructor certificate and rating to a person who does not take an FAA knowledge test or practical test, if the recommendation for the issuance of that certificate or rating is in accordance with the following requirements:

(a) The person graduated from a training course for which the pilot school holds examining authority.

(b) Except as provided in this paragraph, the person satisfactorily completed all the curriculum requirements of that pilot school's approved training course. A person who transfers from one part 141 approved pilot school to another part 141 approved pilot school may receive credit for that previous training, provided the following requirements are met:

(1) The maximum credited training time does not exceed one-half of the receiving school's curriculum requirements;

(2) The person completes a knowledge and proficiency test conducted by the receiving school for the purpose of determining the amount of pilot experience and knowledge to be credited;

(3) The receiving school determines (based on the person's performance on the knowledge and proficiency test required by paragraph (b)(2) of this section) the amount of credit to be awarded, and records that credit in the person's training record;

(4) The person who requests credit for previous pilot experience and knowledge obtained the experience and knowledge from another part 141 approved pilot school and training course; and

(5) The receiving school retains a copy of the person's training record from the previous school.

(c) Tests given by a pilot school that holds examining authority must be approved by the Administrator and be at least equal in scope, depth, and difficulty to the comparable knowledge and practical tests prescribed by the Administrator under part 61 of this chapter.

(d) A pilot school that holds examining authority may not use its knowledge or practical tests if the school:

(1) Knows, or has reason to believe, the test has been compromised; or

(2) Is notified by a FAA Flight Standards District Office that there is reason to believe or it is known that the test has been compromised.

(e) A pilot school that holds examining authority must maintain a record of all temporary airman certificates it issues, which consist of the following information:

(1) A chronological listing that includes—

(i) The date the temporary airman certificate was issued;

(ii) The student to whom the temporary airman certificate was issued, and that student's permanent mailing address and telephone number;

(iii) The training course from which the student graduated;

(iv) The name of person who conducted the knowledge or practical test;

(v) The type of temporary airman certificate or rating issued to the student; and

(vi) The date the student's airman application file was sent to the FAA for processing for a permanent airman certificate.

(2) A copy of the record containing each student's graduation certificate, airman application, temporary airman certificate, superseded airman certificate (if applicable), and knowledge test or practical test results; and

(3) The records required by paragraph (e) of this section must be retained for 1 year and made available to the Administrator upon request. These records must be surrendered to the Administrator when the pilot school ceases to have examining authority.

(f) Except for pilot schools that have an airman certification representative, when a student passes the knowledge test or practical test, the pilot school that holds examining authority must submit that student's airman application file and training record to the FAA for processing for the issuance of a permanent airman certificate.

Subpart E—Operating Rules

§ 141.71 Applicability.

This subpart prescribes the operating rules applicable to a pilot school or provisional pilot school certificated under the provisions of this part.

§ 141.73 Privileges.

(a) The holder of a pilot school certificate or a provisional pilot school certificate may advertise and conduct approved pilot training courses in accordance with the certificate and any ratings that it holds.

(b) A pilot school that holds examining authority for an approved training course may recommend a graduate of that course for the issuance of an appropriate pilot, flight instructor, or ground instructor certificate and rating, without taking an FAA knowledge test or practical test, provided the training course has been approved and meets the minimum ground and flight training time requirements of this part.

§ 141.75 Aircraft requirements.

(a) The following items must be carried on each aircraft used for flight training and solo flights:

(1) A pretakeoff and prelanding checklist; and

(2) The operator's handbook for the aircraft, if one is furnished by the manufacturer, or copies of the handbook if furnished to each student using the aircraft.

(b) Each aircraft used in the certification and rating courses listed in § 141.11 of this part must have a standard airworthiness certificate or a primary airworthiness certificate; and

(c) Each aircraft used in the agricultural aircraft operations, external-load operations, test pilot, and special operations courses listed in § 141.11 of this part may have a restricted airworthiness certificate, if its use for training is not prohibited by the aircraft's operating limitations.

§ 141.77 Limitations.

(a) The holder of a pilot school certificate or a provisional pilot school certificate may not issue a graduation certificate to a student, or recommend a student for a pilot certificate or rating, unless the student has:

(1) Completed the training specified in the pilot school's course of training; and

(2) Passed the required final tests.

(b) Except as provided in paragraph (c) of this section, the holder of a pilot school certificate or a provisional pilot school certificate may not graduate a student from a course of training unless the student has completed all of the curriculum requirements of that course;

(c) A student may be given credit towards the curriculum requirements of a course for previous pilot experience and knowledge, provided the following conditions are met:

(1) If the credit is based upon a part 141-approved training course, the credit given that student for the previous pilot experience and knowledge may be 50 percent of the curriculum requirements and must be based upon a proficiency test or knowledge test, or both, conducted by the receiving pilot school;

(2) If the credit is not based upon a part 141-approved training course, the credit given that student for the previous pilot experience and knowledge shall not exceed more than 25 percent of the curriculum requirements and must be based upon a proficiency test or knowledge test, or both, conducted by the receiving pilot school;

(3) The receiving school determines the amount of course credit to be transferred under paragraph (c)(1) or paragraph (c)(2) of this section, based on a proficiency test or knowledge test, or both, of the student; and

(4) Credit for training specified in paragraph (c)(1) or paragraph (c)(2) may be given if the previous provider of the training has certified the kind and amount of training provided, and the result of each stage check and end-of-course test, if applicable, given to the student.

§ 141.79 Flight training.

(a) No person other than a certificated flight instructor or commercial pilot with a lighter-than-air rating who has the ratings and the minimum qualifications specified in the approved training course outline may give a student flight training under an approved course of training.

(b) No student pilot may be authorized to start a solo practice flight from an airport until the flight has been approved by a certificated flight instructor or commercial pilot with a lighter-than-air rating who is present at that airport.

(c) Each chief instructor and assistant chief instructor assigned to a training course must complete, at least once every 12 calendar months, an approved syllabus of training consisting of ground or flight training, or both, or an approved flight instructor refresher course.

(d) Each certificated flight instructor or commercial pilot with a lighter-than-air rating who is assigned to a flight training course must satisfactorily complete the following tasks, which must be administered by the school's chief instructor, assistant chief instructor, or check instructor:

(1) Prior to receiving authorization to train students in a flight training course, accomplish—

(i) A review of and receive a briefing on the objectives and standards of that training course; and

(ii) An initial proficiency check in each make and model of aircraft used in that training course in which that person provides training; and

(2) Every 12 calendar months after the month in which the person last complied with paragraph (d)(1)(ii) of this section, accomplish a recurrent proficiency check in one of the aircraft the person trains students.

§ 141.81 Ground training.

(a) Except as provided in paragraph (b) of this section, each instructor who is assigned to a ground training course, must hold a flight or ground instructor certificate, or a commercial pilot certificate with a lighter-than-air rating

with the appropriate rating for that course of training.

(b) A person who does not meet the requirements of paragraph (a) of this section may be assigned ground training duties in a ground training course, if:

(1) The chief instructor who is assigned to that ground training course finds the person qualified to give that training; and

(2) The training is given while under the supervision of the chief instructor or the assistant chief instructor who is present at the facility when the training is given.

(c) An instructor may not be used in a ground training course until that instructor has been briefed in regard to the objectives and standards of that course by the chief instructor, assistant chief instructor, or check instructor.

§ 141.83 Quality of training.

(a) Each pilot school or provisional pilot school must meet the following requirements:

(1) Comply with its approved training course; and

(2) Provide training of such quality that meets the requirements of § 141.5(d) of this part.

(b) The failure of a pilot school or provisional pilot school to maintain the quality of training specified in paragraph (a) of this section may be the basis for suspending or revoking that school's certificate.

(c) When requested by the Administrator, a pilot school or provisional pilot school must allow the FAA to administer any knowledge test, practical test, stage check, or end-of-course test to its students.

(d) When a stage check or end-of-course test is administered by the FAA under the provisions of paragraph (c) of this section, and the student has not completed the training course, then that test will be based on the standards prescribed in the school's approved training course.

(e) If the practical test or knowledge test administered by the FAA under the provisions of paragraph (c) of this section is given to a student who has completed the school's training course, that test will be based upon the areas of operation approved by the Administrator.

§ 141.85 Chief instructor responsibilities.

(a) Each person designated as a chief instructor for a pilot school or provisional pilot school shall be responsible for:

(1) Certifying each student's training record, graduation certificate, stage check and end-of-course test reports, recommendation for course completion, and application;

(2) Ensuring that each certificated flight instructor, certificated ground instructor, or commercial pilot with a lighter-than-air rating passes an initial proficiency check prior to that instructor being assigned instructing duties in the school's approved training course and thereafter that the instructor passes a recurrent proficiency check every 12 calendar months after the month in which the initial test was accomplished;

(3) Ensuring that each student accomplishes the required stage checks and end-of-course tests in accordance with the school's approved training course; and

(4) Maintaining training techniques, procedures, and standards for the school that are acceptable to the Administrator.

(b) The chief instructor or an assistant chief instructor must be available at the pilot school or, if away from the pilot school, be available by telephone, radio, or other electronic means during the time that training is given for an approved training course.

(c) The chief instructor may delegate authority for conducting stage checks, end-of-course tests, and flight instructor proficiency checks to the assistant chief instructor or a check instructor.

§ 141.87 Change of chief instructor.

Whenever a pilot school or provisional pilot school makes a change of designation of its chief instructor, that school:

(a) Must immediately provide the FAA Flight Standards District Office that has jurisdiction over the area in which the school is located with written notification of the change;

(b) May conduct training without a chief instructor for that training course for a period not to exceed 60 days while awaiting the designation and approval of another chief instructor;

(c) May, for a period not to exceed 60 days, have the stage checks and end-of-course tests administered by:

(1) The training course's assistant chief instructor, if one has been designated;

(2) The training course's check instructor, if one has been designated;

(3) An FAA inspector; or

(4) An examiner.

(d) Must, after 60 days without a chief instructor, cease operations and surrender its certificate to the Administrator; and

(e) May have its certificate reinstated, upon:

(1) Designating and approving another chief instructor;

(2) Showing it meets the requirements of § 141.27(a)(2) of this part; and

(3) Applying for reinstatement on a form and in a manner prescribed by the Administrator.

§ 141.89 Maintenance of personnel, facilities, and equipment.

The holder of a pilot school certificate or provisional pilot school certificate may not provide training to a student who is enrolled in an approved course of training unless:

(a) Each airport, aircraft, and facility necessary for that training meets the standards specified in the holder's approved training course outline and the appropriate requirements of this part; and

(b) Except as provided in § 141.87 of this part, each chief instructor, assistant chief instructor, check instructor, or instructor meets the qualifications specified in the holder's approved course of training and the appropriate requirements of this part.

§ 141.91 Satellite bases.

The holder of a pilot school certificate or provisional pilot school certificate may conduct ground training or flight training in an approved course of training at a base other than its main operations base if:

(a) An assistant chief instructor is designated for each satellite base, and that assistant chief instructor is available at the satellite pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that training is provided for an approved training course;

(b) The airport, facilities, and personnel used at the satellite base meet the appropriate requirements of subpart B of this part and its approved training course outline;

(c) The instructors are under the direct supervision of the chief instructor or assistant chief instructor for the appropriate training course, who is readily available for consultation in accordance with § 141.85(b) of this part; and

(d) The FAA Flight Standards District Office having jurisdiction over the area in which the school is located is notified in writing if training is conducted at a base other than the school's main operations base for more than 7 consecutive days.

§ 141.93 Enrollment.

(a) The holder of a pilot school certificate or a provisional pilot school certificate shall, at the time a student is enrolled in an approved training course, furnish that student with a copy of the following:

(1) A certificate of enrollment containing—

(i) The name of the course in which the student is enrolled; and

(ii) The date of that enrollment.

(2) A copy of the student's training syllabus.

(3) A copy of the safety procedures and practices developed by the school that describe the use of school's facilities and the operation of its aircraft. Those procedures and practices shall include training on at least the following information—

(i) The weather minimums required by the school for dual and solo flights;

(ii) The procedures for starting and taxiing aircraft on the ramp;

(iii) Fire precautions and procedures;

(iv) Redispatch procedures after unprogrammed landings, on and off airports;

(v) Aircraft discrepancies and write-offs;

(vi) Securing of aircraft when not in use;

(vii) Fuel reserves necessary for local and cross-country flights;

(viii) Avoidance of other aircraft in flight and on the ground;

(ix) Minimum altitude limitations and simulated emergency landing instructions; and

(x) A description of and instructions regarding the use of assigned practice areas.

(b) The holder of a pilot school certificate or provisional pilot school certificate must maintain a monthly listing of persons enrolled in each training course offered by the school.

§ 141.95 Graduation certificate.

(a) The holder of a pilot school certificate or provisional pilot school certificate shall issue a graduation certificate to each student who completes its approved course of training.

(b) The graduation certificate must be issued to the student upon completion of the course of training and contain at least the following information:

(1) The name of the school and the certificate number of the school;

(2) The name of the graduate to whom it was issued;

(3) The course of training for which it was issued;

(4) The date of graduation;

(5) A statement that the student has satisfactorily completed each required stage of the approved course of training including the tests for those stages;

(6) A certification of the information contained on the graduation certificate by the chief instructor for that course of training; and

(7) A statement showing the cross-country training that the student received in the course of training.

Subpart F—Records

§ 141.101 Training records.

(a) Each holder of a pilot school certificate or provisional pilot school certificate must establish and maintain a current and accurate record of the participation of each student enrolled in an approved course of training conducted by the school that includes the following information:

(1) The date the student was enrolled in the approved course;

(2) A chronological log of the student's course attendance, subjects, and flight operations covered in the student's training, and the names and grades of any tests taken by the student; and

(3) The date the student graduated, terminated training, or transferred to another school.

(b) The records required to be maintained in a student's logbook will not suffice for the record required by paragraph (a) of this section.

(c) Whenever a student graduates, terminates training, or transfers to another school, the student's record must be certified to that effect by the chief instructor.

(d) The holder of a pilot school certificate or a provisional pilot school certificate must retain each student record required by this section for at least 1 year from the date that the student:

(1) Graduates from the course to which the record pertains;

(2) Terminates enrollment in the course to which the record pertains; or

(3) Transfers to another school.

(e) The holder of a pilot school certificate or a provisional pilot school certificate must make a copy of the student's training record available to the student upon request.

Appendix A tp Part 141—Recreational Pilot Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum required for a recreational pilot certification course under this part, for the following ratings:

(a) Airplane single-engine.

(b) Rotorcraft helicopter.

(c) Rotorcraft gyroplane.

2. *Eligibility for enrollment.* A person must hold a student pilot certificate prior to enrolling in the flight portion of the recreational pilot certification course.

3. *Aeronautical knowledge training.* Each approved course must include at least 20 hours of ground training on the following aeronautical knowledge areas, appropriate to the aircraft category and class for which the course applies:

(a) Applicable Federal Aviation Regulations for recreational pilot privileges, limitations, and flight operations;

(b) Accident reporting requirements of the National Transportation Safety Board;

(c) Applicable subjects in the ''Aeronautical Information Manual'' and the appropriate FAA advisory circulars;

(d) Use of aeronautical charts for VFR navigation using pilotage with the aid of a magnetic compass;

(e) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(f) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(g) Effects of density altitude on takeoff and climb performance;

(h) Weight and balance computations;

(i) Principles of aerodynamics, powerplants, and aircraft systems;

(j) Stall awareness, spin entry, spins, and spin recovery techniques, if applying for an airplane single-engine rating;

(k) Aeronautical decision making and judgment; and

(l) Preflight action that includes—

(1) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(2) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

4. *Flight training.* (a) Each approved course must include at least 30 hours of flight training (of which 15 hours must be with a certificated flight instructor and 3 hours must be solo flight training) on the approved areas of operation listed in paragraph (c) of this section that are appropriate to the aircraft category and class rating for which the course applies, including:

(1) Except as provided in § 61.100 of this chapter, 2 hours of dual flight training to and at an airport that is located more than 25 nautical miles from the airport where the applicant normally trains, with at least three takeoffs and three landings; and

(2) 3 hours of dual flight training in an aircraft that is appropriate to the aircraft category and class for which the course applies, in preparation for the practical test within 60 days preceding the date of the test.

(b) Each training flight must include a preflight briefing and a postflight critique of the student by the flight instructor assigned to that flight.

(c) Flight training must include the following approved areas of operation appropriate to the aircraft category and class rating—

(1) *For an airplane single-engine course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Emergency operations; and

(x) Postflight procedures.

(2) *For a rotorcraft helicopter course:* (i) Preflight preparation;

(ii) Preflight procedures;
(iii) Airport and heliport operations;
(iv) Hovering maneuvers;
(v) Takeoffs, landings, and go-arounds;
(vi) Performance maneuvers;
(vii) Navigation;
(viii) Emergency operations; and
(ix) Postflight procedures.

(3) *For a rotorcraft gyroplane course:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Airport operations;
(iv) Takeoffs, landings, and go-arounds;
(v) Performance maneuvers;
(vi) Ground reference maneuvers;
(vii) Navigation;
(viii) Flight at slow airspeeds;
(ix) Emergency operations; and
(x) Postflight procedures.

5. *Solo flight training.* Each approved course must include at least 3 hours of solo flight training on the approved areas of operation listed in paragraph (c) of section No. 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

6. *Stage checks and end-of-course tests.* (a) Each student enrolled in a recreational pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation listed in paragraph (c) of section No. 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in solo flight.

Appendix B—Private Pilot Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a private pilot certification course required under this part, for the following ratings:
(a) Airplane single-engine.
(b) Airplane multiengine.
(c) Rotorcraft helicopter.
(d) Rotorcraft gyroplane.
(e) Powered-lift.
(f) Glider.
(g) Lighter-than-air airship.
(h) Lighter-than-air balloon.

2. *Eligibility for enrollment.* A person must hold a recreational or student pilot certificate prior to enrolling in the flight portion of the private pilot certification course.

3. *Aeronautical knowledge training.*

(a) Each approved course must include at least the following ground training on the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft category and class rating:

(1) 35 hours of training if the course is for an airplane, rotorcraft, or powered-lift category rating.

(2) 15 hours of training if the course is for a glider category rating.

(3) 10 hours of training if the course is for a lighter-than-air category with a balloon class rating.

(4) 35 hours of training if the course is for a lighter-than-air category with an airship class rating.

(b) Ground training must include the following aeronautical knowledge areas:

(1) Applicable Federal Aviation Regulations for private pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Applicable subjects of the ''Aeronautical Information Manual'' and the appropriate FAA advisory circulars;

(4) Aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems;

(5) Radio communication procedures;

(6) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts;

(7) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence;

(8) Effects of density altitude on takeoff and climb performance;

(9) Weight and balance computations;

(10) Principles of aerodynamics, powerplants, and aircraft systems;

(11) If the course of training is for an airplane category or glider category rating, stall awareness, spin entry, spins, and spin recovery techniques;

(12) Aeronautical decision making and judgment; and

(13) Preflight action that includes—

(i) How to obtain information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(ii) How to plan for alternatives if the planned flight cannot be completed or delays are encountered.

4. *Flight training.* (a) Each approved course must include at least the following flight training, as provided in this section and section No. 5 of this appendix, on the approved areas of operation listed in paragraph (d) of this section, appropriate to the aircraft category and class rating:

(1) 35 hours of training if the course is for an airplane, rotorcraft, powered-lift, or airship rating.

(2) 6 hours of training if the course is for a glider rating.

(3) 8 hours of training if the course is for a balloon rating.

(b) Each approved course must include at least the following flight training:

(1) *For an airplane single-engine course:* 20 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(1) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a single-engine airplane;

(ii) 3 hours of night flight training in a single-engine airplane that includes—

(A) One cross-country flight of more than 100-nautical-miles total distance; and

(B) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) 3 hours of instrument training in a single-engine airplane; and

(iv) 3 hours of flight training in a single-engine airplane in preparation for the practical test within 60 days preceding the date of the test.

(2) *For an airplane multiengine course:* 20 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(2) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a multiengine airplane;

(ii) 3 hours of night flight training in a multiengine airplane that includes—

(A) One cross-country flight of more than 100-nautical-miles total distance; and

(B) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) 3 hours of instrument training in a multiengine airplane; and

(iv) 3 hours of flight training in a multiengine airplane in preparation for the practical test within 60 days preceding the date of the test.

(3) *For a rotorcraft helicopter course:* 20 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(3) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a helicopter.

(ii) 3 hours of night flight training in a helicopter that includes—

(A) One cross-country flight of more than 50-nautical-miles total distance; and

(B) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) 3 hours of flight training in a helicopter in preparation for the practical test within 60 days preceding the date of the test.

(4) *For a rotorcraft gyroplane course:* 20 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(4) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a gyroplane.

(ii) 3 hours of night flight training in a gyroplane that includes—

(A) One cross-country flight over 50-nautical-miles total distance; and

(B) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) 3 hours of flight training in a gyroplane in preparation for the practical test within 60 days preceding the date of the test.

(5) *For a powered-lift course:* 20 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(5) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in a powered-lift;

(ii) 3 hours of night flight training in a powered-lift that includes—

(A) One cross-country flight of more than 100-nautical-miles total distance; and

(B) 10 takeoffs and 10 landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) 3 hours of instrument training in a powered-lift; and

(iv) 3 hours of flight training in a powered-lift in preparation for the practical test, within 60 days preceding the date of the test.

(6) *For a glider course:* 4 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(6) of this section that includes at least—

(i) Five training flights in a glider on launch/tow procedures approved for the course and in the appropriate approved areas of operation listed in paragraph (d)(6) of this section; and

(ii) Three training flights in a glider in preparation for the practical test within 60 days preceding the date of the test.

(7) *For a lighter-than-air airship course:* 20 hours of flight training from a commercial pilot with an airship rating on the approved areas of operation in paragraph (d)(7) of this section that includes at least—

(i) Except as provided in § 61.111 of this chapter, 3 hours of cross-country flight training in an airship;

(ii) 3 hours of night flight training in an airship that includes—

(A) One cross-country flight over 25-nautical-miles total distance; and

(B) Five takeoffs and five landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport.

(iii) 3 hours of instrument training in an airship; and

(iv) 3 hours of flight training in an airship in preparation for the practical test within 60 days preceding the date of the test.

(8) *For a lighter-than-air balloon course:* 8 hours of flight training, including at least five flights, from a commercial pilot with a balloon rating on the approved areas of operation in paragraph (d)(8) of this section, that includes—

(i) If the training is being performed in a gas balloon—

(A) Two flights of 1 hour each;

(B) One flight involving a controlled ascent to 3,000 feet above the launch site; and

(C) Two flights in preparation for the practical test within 60 days preceding the date of the test.

(ii) If the training is being performed in a balloon with an airborne heater—

(A) Two flights of 30 minutes each;

(B) One flight involving a controlled ascent to 2,000 feet above the launch site; and

(C) Two flights in preparation for the practical test within 60 days preceding the date of the test.

(c) For use of flight simulators or flight training devices:

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part may be credited for a maximum of 15 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part may be credited for a maximum of 7.5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in flight simulators or flight training devices described in paragraphs (c)(2) and (c)(3) of this section, if used in combination, may be credited for a maximum of 15 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (c)(3) of this section.

(d) Each approved course must include the flight training on the approved areas of operation listed in this paragraph that are appropriate to the aircraft category and class rating—

(1) *For a single-engine airplane course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Basic instrument maneuvers;

(x) Emergency operations;

(xi) Night operations, and

(xii) Postflight procedures.

(2) *For a multiengine airplane course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Basic instrument maneuvers;

(x) Emergency operations;

(xi) Multiengine operations;

(xii) Night operations; and

(xiii) Postflight procedures.

(3) For a rotorcraft helicopter course: (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Navigation;

(viii) Emergency operations;

(ix) Night operations; and

(x) Postflight procedures.

(4) For a rotorcraft gyroplane course:

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Flight at slow airspeeds;

(ix) Emergency operations;

(x) Night operations; and

(xi) Postflight procedures.

(5) *For a powered-lift course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Ground reference maneuvers;

(viii) Navigation;

(ix) Slow flight and stalls;

(x) Basic instrument maneuvers;

(xi) Emergency operations;

(xii) Night operations; and

(xiii) Postflight procedures.

(6) *For a glider course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and gliderport operations;

(iv) Launches/tows, as appropriate, and landings;

(v) Performance speeds;

(vi) Soaring techniques;

(vii) Performance maneuvers;

(viii) Navigation;

(ix) Slow flight and stalls;

(x) Emergency operations; and

(xi) Postflight procedures.

(7) *For a lighter-than-air airship course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Emergency operations; and

(ix) Postflight procedures.

(8) *For a lighter-than-air balloon course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Launches and landings;

(v) Performance maneuvers;

(vi) Navigation;

(vii) Emergency operations; and

(viii) Postflight procedures.

5. *Solo flight training.* Each approved course must include at least the following solo flight training:

(a) *For an airplane single-engine course:* 5 hours of solo flight training in a single-engine airplane on the approved areas of operation in paragraph (d)(1) of section No. 4 of this appendix that includes at least—

(1) One solo cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(b) *For an airplane multiengine course:* 5 hours of flight training in a multiengine airplane performing the functions of a pilot in command while under the supervision of a certificated flight instructor. The training shall consist of the approved areas of operation in paragraph (d)(2) of section No. 4 of this appendix, and include at least—

(1) One cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(c) *For a rotorcraft helicopter course:* 5 hours of solo flight training in a helicopter

on the approved areas of operation in paragraph (d)(3) of section No. 4 of this appendix that includes at least—

(1) One solo cross-country flight of more than 50 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(d) *For a rotorcraft gyroplane course:* 5 hours of solo flight training in gyroplanes on the approved areas of operation in paragraph (d)(4) of section No. 4 of this appendix that includes at least—

(1) One solo cross-country flight of more than 50 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(e) *For a powered-lift course:* 5 hours of solo flight training in a powered-lift on the approved areas of operation in paragraph (d)(5) of section No. 4 of this appendix that includes at least—

(1) One solo cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations; and

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(f) *For a glider course:* Two solo flights in a glider on the approved areas of operation in paragraph (d)(6) of section No. 4 of this appendix, and the launch and tow procedures appropriate for the approved course.

(g) *For a lighter-than-air airship course:* 5 hours of flight training in an airship performing the functions of pilot in command while under the supervision of a commercial pilot with an airship rating. The training shall consist of the approved areas of operation in paragraph (d)(7) of section No. 4 of this appendix.

(h) *For a lighter-than-air balloon course:* Two solo flights in a balloon with an airborne heater if the course involves a balloon with an airborne heater, or, if the course involves a gas balloon, at least two flights in a gas balloon performing the functions of pilot in command while under the supervision of a commercial pilot with a balloon rating. The training shall consist of the approved areas of operation in paragraph (d)(8) of section No. 4 of this appendix, in the kind of balloon for which the course applies.

6. *Stage checks and end-of-course tests.*

(a) Each student enrolled in a private pilot course must satisfactorily accomplish the stage checks and end-of-course tests in accordance with the school's approved training course, consisting of the approved areas of operation listed in paragraph (d) of section No. 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in solo flight.

Appendix C to Part 141—Instrument Rating Course

1. *Applicability.* This appendix prescribes the minimum curriculum for an instrument rating course and an additional instrument rating course, required under this part, for the following ratings:

(a) Instrument—airplane.

(b) Instrument—helicopter.

(c) Instrument—powered-lift.

2. *Eligibility for enrollment.* A person must hold at least a private pilot certificate with an aircraft category and class rating appropriate to the instrument rating for which the course applies prior to enrolling in the flight portion of the instrument rating course.

3. *Aeronautical knowledge training.* (a) Each approved course must include at least the following ground training on the aeronautical knowledge areas listed in paragraph (b) of this section appropriate to the instrument rating for which the course applies:

(1) 30 hours of training if the course is for an initial instrument rating.

(2) 20 hours of training if the course is for an additional instrument rating.

(b) Ground training must include the following aeronautical knowledge areas:

(1) Applicable Federal Aviation Regulations for IFR flight operations;

(2) Appropriate information in the ''Aeronautical Information Manual'';

(3) Air traffic control system and procedures for instrument flight operations;

(4) IFR navigation and approaches by use of navigation systems;

(5) Use of IFR en route and instrument approach procedure charts;

(6) Procurement and use of aviation weather reports and forecasts, and the elements of forecasting weather trends on the basis of that information and personal observation of weather conditions;

(7) Safe and efficient operation of aircraft under instrument flight rules and conditions;

(8) Recognition of critical weather situations and windshear avoidance;

(9) Aeronautical decision making and judgment; and

(10) Crew resource management, to include crew communication and coordination.

4. *Flight training.* (a) Each approved course must include at least the following flight training on the approved areas of operation listed in paragraph (d) of this section, appropriate to the instrument-aircraft category and class rating for which the course applies:

(1) 35 hours of instrument training if the course is for an initial instrument rating.

(2) 15 hours of instrument training if the course is for an additional instrument rating.

(b) For the use of flight simulators or flight training devices—

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part may be credited for a maximum of 50 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part may be credited for a maximum of 25 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in flight simulators or flight training devices described in paragraphs (b)(2) and (b)(3) of this section, if used in combination, may be credited for a maximum of 50 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (b)(3) of this section.

(c) Each approved course must include the following flight training—

(1) *For an instrument airplane course:* Instrument training time from a certificated flight instructor with an instrument rating on the approved areas of operation in paragraph (d) of this section including at least one cross-country flight that—

(i) Is in the category and class of airplane that the course is approved for, and is performed under IFR;

(ii) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of at least a straight-line distance of 100 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation systems.

(2) *For an instrument helicopter course:* Instrument training time from a certificated flight instructor with an instrument rating on the approved areas of operation in paragraph (d) of this section including at least one cross-country flight that—

(i) Is in a helicopter and is performed under IFR;

(ii) Is a distance of at least 100 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of at least a straight-line distance of 50 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation systems.

(3) *For an instrument powered-lift course:* Instrument training time from a certificated flight instructor with an instrument rating on the approved areas of operation in paragraph (d) of this section including at least one cross-country flight that—

(i) Is in a powered-lift and is performed under IFR;

(ii) Is a distance of at least 250 nautical miles along airways or ATC-directed routing with one segment of the flight consisting of

at least a straight-line distance of 100 nautical miles between airports;

(iii) Involves an instrument approach at each airport; and

(iv) Involves three different kinds of approaches with the use of navigation systems.

(d) Each approved course must include the flight training on the approved areas of operation listed in this paragraph appropriate to the instrument aircraft category and class rating for which the course applies:

(1) Preflight preparation;

(2) Preflight procedures;

(3) Air traffic control clearances and procedures;

(4) Flight by reference to instruments;

(5) Navigation systems;

(6) Instrument approach procedures;

(7) Emergency operations; and

(8) Postflight procedures.

5. *Stage checks and end-of-course tests.* Each student enrolled in an instrument rating course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation listed in paragraph (d) of section No. 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

Appendix D to Part 141—Commercial Pilot Ccrtification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a commercial pilot certification course required under this part, for the following ratings:

(a) Airplane single-engine.

(b) Airplane multiengine.

(c) Rotorcraft helicopter.

(d) Rotorcraft gyroplane.

(e) Powered-lift.

(f) Glider.

(g) Lighter-than-air airship.

(h) Lighter-than-air balloon.

2. *Eligibility for enrollment.* A person must hold the following prior to enrolling in the flight portion of the commercial pilot certification course:

(a) At least a private pilot certificate; and

(b) If the course is for a rating in an airplane or a powered-lift category, then the person must:

(1) Hold an instrument rating in the aircraft that is appropriate to the aircraft category rating for which the course applies; or

(2) Be concurrently enrolled in an instrument rating course that is appropriate to the aircraft category rating for which the course applies, and pass the required instrument rating practical test prior to completing the commercial pilot certification course.

3. *Aeronautical knowledge training.* (a) Each approved course must include at least the following ground training on the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft category and class rating for which the course applies:

(1) 65 hours of training if the course is for an airplane category rating, powered-lift category rating, or a lighter-than-air category with an airship class rating.

(2) 30 hours of training if the course is for a rotorcraft category rating.

(3) 20 hours of training if the course is for a glider category rating.

(4) 20 hours of training if the course is for a lighter-than-air category with a balloon class rating.

(b) Ground training must include the following aeronautical knowledge areas:

(1) Federal Aviation Regulations that apply to commercial pilot privileges, limitations, and flight operations;

(2) Accident reporting requirements of the National Transportation Safety Board;

(3) Basic aerodynamics and the principles of flight;

(4) Meteorology, to include recognition of critical weather situations, windshear recognition and avoidance, and the use of aeronautical weather reports and forecasts;

(5) Safe and efficient operation of aircraft;

(6) Weight and balance computations;

(7) Use of performance charts;

(8) Significance and effects of exceeding aircraft performance limitations;

(9) Use of aeronautical charts and a magnetic compass for pilotage and dead reckoning;

(10) Use of air navigation facilities;

(11) Aeronautical decision making and judgment;

(12) Principles and functions of aircraft systems;

(13) Maneuvers, procedures, and emergency operations appropriate to the aircraft;

(14) Night and high-altitude operations;

(15) Descriptions of and procedures for operating within the National Airspace System; and

(16) Procedures for flight and ground training for lighter-than-air ratings.

4. *Flight training.* (a) Each approved course must include at least the following flight training, as provided in this section and section No. 5 of this appendix, on the approved areas of operation listed in paragraph (d) of this section that are appropriate to the aircraft category and class rating for which the course applies:

(1) 155 hours of training if the course is for an airplane, powered-lift, or an airship rating.

(2) 115 hours of training if the course is for a rotorcraft rating.

(3) 6 hours of training if the course is for a glider rating.

(4) 10 hours and 8 training flights if the course is for a balloon rating.

(b) Each approved course must include at least the following flight training:

(1) *For an airplane single-engine course:* 55 hours of flight training from a certificated flight instructor on the approved areas of operation listed in paragraph (d)(1) of this section that includes at least—

(i) 5 hours of instrument training in a single-engine airplane;

(ii) 10 hours of training in a single-engine airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a single-engine airplane of at least a 2-hour duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day VFR conditions;

(iv) One cross-country flight in a single-engine airplane of at least a 2-hour duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night VFR conditions; and

(v) 3 hours in a single-engine airplane in preparation for the practical test within 60 days preceding the date of the test.

(2) *For an airplane multiengine course:* 55 hours of flight training from a certificated flight instructor on the approved areas of operation listed in paragraph (d)(2) of this section that includes at least—

(i) 5 hours of instrument training in a multiengine airplane;

(ii) 10 hours of training in a multiengine airplane that has retractable landing gear, flaps, and a controllable pitch propeller, or is turbine-powered;

(iii) One cross-country flight in a multiengine airplane of at least a 2-hour duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day VFR conditions;

(iv) One cross-country flight in a multiengine airplane of at least a 2-hour duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night VFR conditions; and

(v) 3 hours in a multiengine airplane in preparation for the practical test within 60 days preceding the date of the test.

(3) *For a rotorcraft helicopter course:* 30 hours of flight training from a certificated flight instructor on the approved areas of operation listed in paragraph (d)(3) of this section that includes at least—

(i) 5 hours of instrument training;

(ii) One cross-country flight in a helicopter of at least a 2-hour duration, a total straight-line distance of more than 50 nautical miles from the original point of departure and occurring in day VFR conditions;

(iii) One cross-country flight in a helicopter of at least a 2-hour duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night VFR conditions; and

(iv) 3 hours in a helicopter in preparation for the practical test within 60 days preceding the date of the test.

(4) *For a rotorcraft gyroplane course:* 30 hours of flight training from a certificated flight instructor on the approved areas of operation listed in paragraph (d)(4) of this section that includes at least—

(i) 5 hours of instrument training;

(ii) One cross-country flight in a gyroplane of at least a 2-hour duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in day VFR conditions;

(iii) One cross-country flight in a gyroplane of at least a 2-hour duration, a total straight-line distance of more than 50 nautical miles from the original point of departure, and occurring in night VFR conditions; and

(iv) 3 hours in a gyroplane in preparation for the practical test within 60 days preceding the date of the test.

(5) *For a powered-lift course:* 55 hours of flight training from a certificated flight instructor on the approved areas of operation

listed in paragraph (d)(5) of this section that includes at least—

(i) 5 hours of instrument training in a powered-lift;

(ii) One cross-country flight in a powered-lift of at least a 2-hour duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in day VFR conditions;

(iii) One cross-country flight in a powered-lift of at least a 2-hour duration, a total straight-line distance of more than 100 nautical miles from the original point of departure, and occurring in night VFR conditions; and

(iv) 3 hours in a powered-lift in preparation for the practical test within 60 days preceding the date of the test.

(6) *For a glider course:* 4 hours of flight training from a certificated flight instructor on the approved areas of operation in paragraph (d)(6) of this section, that includes at least—

(i) Five training flights in a glider on launch/tow procedures approved for the course and on the appropriate approved areas of operation listed in paragraph (d)(6) of this section; and

(ii) Three training flights in a glider in preparation for the practical test within the 60 days preceding the date of the test.

(7) *For a lighter-than-air airship course:* 55 hours of flight training in airships from a commercial pilot with an airship rating on the approved areas of operation in paragraph (d)(7) of this section that includes at least—

(i) 3 hours of instrument training in an airship;

(ii) One cross-country flight in an airship of at least a 1-hour duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in day VFR conditions; and

(iii) One cross-country flight in an airship of at least a 1-hour duration, a total straight-line distance of more than 25 nautical miles from the original point of departure, and occurring in night VFR conditions; and

(iv) 3 hours in an airship, in preparation for the practical test within 60 days preceding the date of the test.

(8) *For a lighter-than-air balloon course:* Flight training from a commercial pilot with a balloon rating on the approved areas of operation in paragraph (d)(8) of this section that includes at least—

(i) If the course involves training in a gas balloon:

(A) Two flights of 1 hour each;

(B) One flight involving a controlled ascent to at least 5,000 feet above the launch site; and

(C) Two flights in preparation for the practical test within 60 days preceding the date of the test.

(ii) If the course involves training in a balloon with an airborne heater:

(A) Two flights of 30 minutes each;

(B) One flight involving a controlled ascent to at least 3,000 feet above the launch site; and

(C) Two flights in preparation for the practical test within 60 days preceding the date of the test.

(c) For the use of flight simulators or flight training devices:

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part may be credited for a maximum of 20 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in the flight training devices described in paragraphs (c)(2) and (c)(3) of this section, if used in combination, may be credited for a maximum of 20 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (c)(3) of this section.

(d) Each approved course must include the flight training on the approved areas of operation listed in this paragraph that are appropriate to the aircraft category and class rating—

(1) *For an airplane single-engine course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Navigation;

(vii) Slow flight and stalls;

(viii) Emergency operations;

(ix) High-altitude operations; and

(x) Postflight procedures.

(2) *For an airplane multiengine course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Navigation;

(vii) Slow flight and stalls;

(viii) Emergency operations;

(ix) Multiengine operations;

(x) High-altitude operations; and

(xi) Postflight procedures.

(3) *For a rotorcraft helicopter course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Navigation;

(viii) Emergency operations;

(ix) Special operations; and

(x) Postflight procedures.

(4) *For a rotorcraft gyroplane course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport operations;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Navigation;

(vii) Flight at slow airspeeds;

(viii) Emergency operations; and

(ix) Postflight procedures.

(5) *For a powered-lift course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and heliport operations;

(iv) Hovering maneuvers;

(v) Takeoffs, landings, and go-arounds;

(vi) Performance maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Emergency operations;

(x) High altitude operations;

(xi) Special operations; and

(xii) Postflight procedures.

(6) *For a glider course:* (i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and gliderport operations;

(iv) Launches/tows, as appropriate, and landings;

(v) Performance speeds;

(vi) Soaring techniques;

(vii) Performance maneuvers;

(viii) Navigation;

(ix) Slow flight and stalls;

(x) Emergency operations; and

(xi) Postflight procedures.

(7) *For a lighter-than-air airship course:* (i) Fundamentals of instructing;

(ii) Technical subjects;

(iii) Preflight preparation;

(iv) Preflight lessons on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport operations;

(vii) Takeoffs, landings, and go-arounds;

(viii) Performance maneuvers;

(ix) Navigation;

(x) Emergency operations; and

(xi) Postflight procedures.

(8) *For a lighter-than-air balloon course:* (i) Fundamentals of instructing;

(ii) Technical subjects;

(iii) Preflight preparation;

(iv) Preflight lesson on a maneuver to be performed in flight;

(v) Preflight procedures;

(vi) Airport operations;

(vii) Launches and landings;

(viii) Performance maneuvers;

(ix) Navigation;

(x) Emergency operations; and

(xi) Postflight procedures.

5. *Solo training.* Each approved course must include at least the following solo flight training:

(a) *For an airplane single-engine course:* 10 hours of solo flight training in a single-engine airplane on the approved areas of operation in paragraph (d)(1) of section No. 4 of this appendix that includes at least—

(1) One cross-country flight, if the training is being performed in the State of Hawaii, with landings at a minimum of three points, and one of the segments consisting of a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each

landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(b) *For an airplane multiengine course:* 10 hours of flight training in a multiengine airplane performing the functions of pilot in command while under the supervision of a certificated flight instructor. The training shall consist of the approved areas of operation in paragraph (d)(2) of section No. 4 of this appendix, and include at least—

(1) One cross-country flight, if the training is being performed in the State of Hawaii, with landings at a minimum of three points, and one of the segments consisting of a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, with landings at a minimum of three points and one segment of the flight consisting of straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(c) *For a rotorcraft helicopter course:* 10 hours of solo flight training in a helicopter on the approved areas of operation in paragraph (d)(3) of section No. 4 of this appendix that includes at least—

(1) One cross-country flight with landings at a minimum of three points and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles from the original point of departure; and

(2) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(d) *For a rotorcraft-gyroplane course:* 10 hours of solo flight training in a gyroplane on the approved areas of operation in paragraph (d)(4) of section No. 4 of this appendix that includes at least—

(1) One cross-country flight with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles from the original point of departure; and

(2) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(e) *For a powered-lift course:* 10 hours of solo flight training in a powered-lift on the approved areas of operation in paragraph (d)(5) of section No. 4 of this appendix that includes at least—

(1) One cross-country flight, if the training is being performed in the State of Hawaii, with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 150 nautical miles;

(2) One cross-country flight, if the training is being performed in a State other than Hawaii, with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 250 nautical miles; and

(3) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern) at an airport with an operating control tower.

(f) *For a glider course:* 5 solo flights in a glider on the approved areas of operation in paragraph (d)(6) of section No. 4 of this appendix.

(g) *For a lighter-than-air airship course:* 10 hours of flight training in an airship, while performing the functions of pilot in command under the supervision of a commercial pilot with an airship rating. The training shall consist of the approved areas of operation in paragraph (d)(7) of section No. 4 of this appendix and include at least—

(1) One cross-country flight with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles from the original point of departure; and

(2) 5 hours in night VFR conditions with 10 takeoffs and 10 landings (with each landing involving a flight with a traffic pattern).

(h) *For a lighter-than-air balloon course:* Two solo flights if the course is for a hot air balloon rating, or, if the course is for a gas balloon rating, at least two flights in a gas balloon, while performing the duties of pilot in command under the supervision of a commercial pilot with a balloon rating. The training shall consist of the approved areas of operation in paragraph (d)(8) of section No. 4 of this appendix, in the kind of balloon for which the course applies.

6. *Stage checks and end-of-course tests.* (a) Each student enrolled in a commercial pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation listed in paragraph (d) of section No. 4 of this appendix that are appropriate to aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in solo flight.

Appendix E to Part 141—Airline Transport Pilot Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a airline transport pilot certification course under this part, for the following ratings:

(a) Airplane single-engine.

(b) Airplane multiengine.

(c) Rotorcraft helicopter.

(d) Powered-lift.

2. *Eligibility for enrollment.* Prior to enrolling in the flight portion of the airline transport pilot certification course, a person must:

(a) Meet the aeronautical experience requirements prescribed in subpart G of part 61 of this chapter for an airline transport pilot certificate that is appropriate to the aircraft category and class rating for which the course applies;

(b) Hold at least a commercial pilot certificate and an instrument rating;

(c) Meet the military experience requirements under § 61.73 of this chapter to qualify for a commercial pilot certificate and an instrument rating, if the person is a rated military pilot or former rated military pilot of an Armed Force of the United States; or

(d) Hold either a foreign airline transport pilot license or foreign commercial pilot license and an instrument rating, if the person holds a pilot license issued by a contracting State to the Convention on International Civil Aviation.

3. *Aeronautical knowledge areas.* (a) Each approved course must include at least 40 hours of ground training on the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft category and class rating for which the course applies.

(b) Ground training must include the following aeronautical knowledge areas:

(1) Applicable Federal Aviation Regulations of this chapter that relate to airline transport pilot privileges, limitations, and flight operations;

(2) Meteorology, including knowledge of and effects of fronts, frontal characteristics, cloud formations, icing, and upper-air data;

(3) General system of weather and NOTAM collection, dissemination, interpretation, and use;

(4) Interpretation and use of weather charts, maps, forecasts, sequence reports, abbreviations, symbols;

(5) National Weather Service functions as they pertain to operations in the National Airspace System;

(6) Windshear and microburst awareness, identification, and avoidance;

(7) Principles of air navigation under instrument meteorological conditions in the National Airspace System;

(8) Air traffic control procedures and pilot responsibilities as they relate to en route operations, terminal area and radar operations, and instrument departure and approach procedures;

(9) Aircraft loading; weight and balance; use of charts, graphs, tables, formulas, and computations; and the effects on aircraft performance;

(10) Aerodynamics relating to an aircraft's flight characteristics and performance in normal and abnormal flight regimes;

(11) Human factors;

(12) Aeronautical decision making and judgment; and

(13) Crew resource management to include crew communication and coordination.

4. *Flight training.* (a) Each approved course must include at least 25 hours of flight training on the approved areas of operation listed in paragraph (c) of this section appropriate to the aircraft category and class rating for which the course applies. At least 15 hours of this flight training must be instrument flight training; and

(b) For the use of flight simulators or flight training devices—

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part may be credited for a maximum of 50 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part may be credited for a maximum of 25 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in flight simulators or flight training devices described in paragraphs (b)(2) and (b)(3) of this section, if used in combination, may be credited for a maximum of 50 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (b)(3) of the section.

(c) Each approved course must include flight training on the approved areas of operation listed in this paragraph appropriate to the aircraft category and class rating for which the course applies:

(1) Preflight preparation;
(2) Preflight procedures;
(3) Takeoff and departure phase;
(4) In-flight maneuvers;
(5) Instrument procedures;
(6) Landings and approaches to landings;
(7) Normal and abnormal procedures;
(8) Emergency procedures; and
(9) Postflight procedures.

5. *Stage checks and end-of-course tests.* (a) Each student enrolled in an airline transport pilot course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation listed in paragraph (c) of section No. 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in solo flight.

Appendix F to Part 141—Floght Instructor Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a flight instructor certification course and an additional flight instructor rating course required under this part, for the following ratings:

(a) Airplane single-engine.
(b) Airplane multiengine.
(c) Rotorcraft helicopter.
(d) Rotorcraft gyroplane.
(e) Powered-lift.
(f) Glider category.

2. *Eligibility for enrollment.* A person must hold the following prior to enrolling in the flight portion of the flight instructor or additional flight instructor rating course:

(a) A commercial pilot certificate or an airline transport pilot certificate, with an aircraft category and class rating appropriate to the flight instructor rating for which the course applies; and

(b) An instrument rating or privilege in an aircraft that is appropriate to the aircraft category and class rating for which the course applies, if the course is for a flight instructor airplane or powered-lift instrument rating.

3. *Aeronautical knowledge training.* (a) Each approved course must include at least the following ground training in the aeronautical knowledge areas listed in paragraph (b) of this section:

(1) 40 hours of training if the course is for an initial issuance of a flight instructor certificate; or

(2) 20 hours of training if the course is for an additional flight instructor rating.

(b) Ground training must include the following aeronautical knowledge areas:

(1) The fundamentals of instructing including—

(i) The learning process;
(ii) Elements of effective teaching;
(iii) Student evaluation and testing;
(iv) Course development;
(v) Lesson planning; and
(vi) Classroom training techniques.

(2) The aeronautical knowledge areas in which training is required for—

(i) A recreational, private, and commercial pilot certificate that is appropriate to the aircraft category and class rating for which the course applies; and

(ii) An instrument rating that is appropriate to the aircraft category and class rating for which the course applies, if the course is for an airplane or powered-lift aircraft rating.

(c) A student who satisfactorily completes 2 years of study on the principles of education at a college or university may be credited with no more than 20 hours of the training required in paragraph (a)(1) of this section.

4. *Flight training.* (a) Each approved course must include at least the following flight training on the approved areas of operation of paragraph (c) of this section appropriate to the flight instructor rating for which the course applies:

(1) 25 hours, if the course is for an airplane, rotorcraft, or powered-lift rating; and

(2) 10 hours and 10 flights, if the course is for a glider category rating.

(b) For the use of flight simulators or flight training devices:

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in flight simulators or flight training devices described in paragraphs (b)(2) and (b)(3) of this section, if used in combination, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (b)(3) of this section.

(c) Each approved course must include flight training on the approved areas of operation listed in this paragraph that are appropriate to the aircraft category and class rating for which the course applies—

(1) *For an airplane—single-engine course:* (i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and seaplane base operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Ground reference maneuvers;
(xi) Slow flight, stalls, and spins;
(xii) Basic instrument maneuvers;
(xiii) Emergency operations; and
(xiv) Postflight procedures.

(2) *For an airplane—multiengine course:* (i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and seaplane base operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Ground reference maneuvers;
(xi) Slow flight and stalls;
(xii) Basic instrument maneuvers;
(xiii) Emergency operations;
(xiv) Multiengine operations; and
(xv) Postflight procedures.

(3) *For a rotorcraft—helicopter course:* (i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and heliport operations;
(vii) Hovering maneuvers;
(viii) Takeoffs, landings, and go-arounds;
(ix) Fundamentals of flight;
(x) Performance maneuvers;
(xi) Emergency operations;
(xii) Special operations; and
(xiii) Postflight procedures.

(4) *For a rotorcraft—gyroplane course:* (i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport operations;
(vii) Takeoffs, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance maneuvers;
(x) Flight at slow airspeeds;
(xi) Ground reference maneuvers;
(xii) Emergency operations; and
(xiii) Postflight procedures.

(5) *For a powered-lift course:* (i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and heliport operations;
(vii) Hovering maneuvers;
(viii) Takeoffs, landings, and go-arounds;

(ix) Fundamentals of flight;
(x) Performance maneuvers;
(xi) Ground reference maneuvers;
(xii) Slow flight and stalls;
(xiii) Basic instrument maneuvers;
(xiv) Emergency operations;
(xv) Special operations; and
(xvi) Postflight procedures.

(6) *For a glider course:* (i) Fundamentals of instructing;
(ii) Technical subject areas;
(iii) Preflight preparation;
(iv) Preflight lesson on a maneuver to be performed in flight;
(v) Preflight procedures;
(vi) Airport and gliderport operations;
(vii) Launches, landings, and go-arounds;
(viii) Fundamentals of flight;
(ix) Performance speeds;
(x) Soaring techniques;
(xi) Performance maneuvers;
(xii) Slow flight, stalls, and spins;
(xiii) Emergency operations; and
(xiv) Postflight procedures.

5. *Stage checks and end-of-course tests.* (a) Each student enrolled in a flight instructor course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the appropriate approved areas of operation listed in paragraph (c) of section No. 4 of this appendix appropriate to the flight instructor rating for which the course applies.

(b) In the case of a student who is enrolled in a flight instructor-airplane rating or flight instructor-glider rating course, that student must have:

(1) Received a logbook endorsement from a certificated flight instructor certifying the student received ground and flight training on stall awareness, spin entry, spins, and spin recovery procedures in an aircraft that is certificated for spins and is appropriate to the rating sought; and

(2) Demonstrated instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures.

Appendix G to Part 141—Flight Instructor Instrument (For an Airplane, Helicopter, or Powered-Lift Instrument Instructor Rating, ae Appropriate) Certification Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a flight instructor instrument certification course required under this part, for the following ratings:

(a) Flight Instructor Instrument—Airplane.
(b) Flight Instructor Instrument—Helicopter.
(c) Flight Instructor Instrument—Powered-lift aircraft.

2. *Eligibility for enrollment.* A person must hold the following prior to enrolling in the flight portion of the flight instructor instrument course:

(a) A commercial pilot certificate or airline transport pilot certificate with an aircraft category and class rating appropriate to the flight instructor category and class rating for which the course applies; and

(b) An instrument rating or privilege on that flight instructor applicant's pilot certificate that is appropriate to the flight instructor instrument rating (for an airplane, helicopter-, or powered-lift-instrument rating, as appropriate) for which the course applies.

3. *Aeronautical knowledge training.* (a) Each approved course must include at least 15 hours of ground training on the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the flight instructor instrument rating (for an airplane-, helicopter-, or powered-lift-instrument rating, as appropriate) for which the course applies:

(b) Ground training must include the following aeronautical knowledge areas:

(1) The fundamentals of instructing including:
(i) Learning process;
(ii) Elements of effective teaching;
(iii) Student evaluation and testing;
(iv) Course development;
(v) Lesson planning; and
(vi) Classroom training techniques.

(2) The aeronautical knowledge areas in which training is required for an instrument rating that is appropriate to the aircraft category and class rating for the course which applies.

4. *Flight training.* (a) Each approved course must include at least 15 hours of flight training in the approved areas of operation of paragraph (c) of this section appropriate to the flight instructor rating for which the course applies.

(b) For the use of flight simulators or flight training devices:

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved for, meets requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in flight simulators or flight training devices described in paragraphs (b)(2) and (b)(3) of this section, if used in combination, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (b)(3) of this section.

(c) An approved course for the flight instructor-instrument rating must include flight training on the following approved areas of operation that are appropriate to the instrument-aircraft category and class rating for which the course applies:

(1) Fundamentals of instructing;
(2) Technical subject areas;
(3) Preflight preparation;
(4) Preflight lesson on a maneuver to be performed in flight;
(5) Air traffic control clearances and procedures;
(6) Flight by reference to instruments;
(7) Navigation systems;
(8) Instrument approach procedures;
(9) Emergency operations; and
(10) Postflight procedures.

5. *Stage checks and end-of-course tests.* Each student enrolled in a flight instructor instrument course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation listed in paragraph (c) of section No. 4 of this appendix that are appropriate to the flight instructor instrument rating (for an airplane-, helicopter-, or powered-lift-instrument rating, as appropriate) for which the course applies.

Appendix H to Part 141—Ground Instructor Certification Course

1. *Applicability*. This appendix prescribes the minimum curriculum for a ground instructor certification course and an additional ground instructor rating course, required under this part, for the following ratings:

(a) Ground Instructor—Basic.
(b) Ground Instructor—Advanced.
(c) Ground Instructor—Instrument.

2. *Aeronautical knowledge training.* (a) Each approved course must include at least the following ground training on the knowledge areas listed in paragraphs (b), (c), (d), and (e) of this section, appropriate to the ground instructor rating for which the course applies:

(1) 20 hours of training if the course is for an initial issuance of a ground instructor certificate; or

(2) 10 hours of training if the course is for an additional ground instructor rating.

(b) Ground training must include the following aeronautical knowledge areas:

(1) Learning process;
(2) Elements of effective teaching;
(3) Student evaluation and testing;
(4) Course development;
(5) Lesson planning; and
(6) Classroom training techniques.

(c) Ground training for a basic ground instructor certificate must include the aeronautical knowledge areas applicable to a recreational and private pilot.

(d) Ground training for an advanced ground instructor rating must include the aeronautical knowledge areas applicable to a recreational, private, commercial, and airline transport pilot.

(e) Ground training for an instrument ground instructor rating must include the aeronautical knowledge areas applicable to an instrument rating.

(f) A student who satisfactorily completed 2 years of study on the principles of education at a college or university may be credited with 10 hours of the training required in paragraph (a)(1) of this section.

3. *Stage checks and end-of-course tests.* Each student enrolled in a ground instructor course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved

knowledge areas in paragraph (b), (c), (d), and (e) of section No. 2 of this appendix appropriate to the ground instructor rating for which the course applies.

Appendix I to Part 141—Additional Aircraft Category or Class Rating Course

1. *Applicability*. This appendix prescribes the minimum curriculum for an additional aircraft category rating course or an additional aircraft class rating course required under this part, for the following ratings:

(a) Airplane single-engine.
(b) Airplane multiengine.
(c) Rotorcraft helicopter.
(d) Rotorcraft gyroplane.
(e) Powered-lift.
(f) Glider.
(g) Lighter-than-air airship.
(h) Lighter-than-air balloon.

2. *Eligibility for enrollment*. A person must hold the level of pilot certificate for the additional aircraft category and class rating for which the course applies prior to enrolling in the flight portion of an additional aircraft category or additional aircraft class rating course.

3. *Aeronautical knowledge training.* Each approved course for an additional aircraft category rating and additional aircraft class rating must include the total number of hours of training in all the aeronautical knowledge areas appropriate to the aircraft rating and pilot certificate level for which the course applies.

4. *Flight training.* (a) Each approved course for an additional aircraft category rating or additional aircraft class must include the total number of hours of flight training on all of the approved areas of operation of this paragraph appropriate to the aircraft rating and pilot certificate level for which the course applies.

(b) For the use of flight simulators or flight training devices:

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets the requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in the flight simulators or flight training devices described in paragraphs (b)(2) and (b)(3) of this section, if used in combination, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (c)(3) of this section.

5. *Stage checks and end-of-course tests*. (a) Each student enrolled in an additional aircraft category rating course or an additional aircraft class rating course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation in section No. 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies at the appropriate pilot certificate level.

(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in solo flight.

Appendix J to Part 141—Aircraft Type Rating Course, For Other Than an Airline Transport Pilot Certificate

1. *Applicability*. This appendix prescribes the minimum curriculum for an aircraft type rating course other than an airline transport pilot certificate, for:

(a) A type rating in an airplane category—single-engine class.
(b) A type rating in an airplane category—multiengine class.
(c) A type rating in a rotorcraft category—helicopter class.
(d) A type rating in a powered-lift category.
(e) Other aircraft type ratings specified by the Administrator through the aircraft type certificate procedures.

2. *Eligibility for enrollment*. Prior to enrolling in the flight portion of an aircraft type rating course, a person must hold at least a private pilot certificate and:

(a) An instrument rating in the category and class of aircraft that is appropriate to the aircraft type rating for which the course applies, provided the aircraft's type certificate does not have a VFR limitation; or

(b) Be concurrently enrolled in an instrument rating course in the category and class of aircraft that is appropriate to the aircraft type rating for which the course applies, and pass the required instrument rating practical test concurrently with the aircraft type rating practical test.

3. *Aeronautical knowledge training.* (a) Each approved course must include at least 10 hours of ground training on the aeronautical knowledge areas listed in paragraph (b) of this section, appropriate to the aircraft type rating for which the course applies.

(b) Ground training must include the following aeronautical areas:

(1) Proper control of airspeed, configuration, direction, altitude, and attitude in accordance with procedures and limitations contained in the aircraft's flight manual, checklists, or other approved material appropriate to the aircraft type;

(2) Compliance with approved en route, instrument approach, missed approach, ATC, or other applicable procedures that apply to the aircraft type;

(3) Subjects requiring a practical knowledge of the aircraft type and its powerplant, systems, components, operational, and performance factors;

(4) The aircraft's normal, abnormal, and emergency procedures, and the operations and limitations relating thereto;

(5) Appropriate provisions of the approved aircraft's flight manual;

(6) Location of and purpose of inspecting each item on the aircraft's checklist that relate to the exterior and interior preflight; and

(7) Use of the aircraft's prestart checklist, appropriate control system checks, starting procedures, radio and electronic equipment checks, and the selection of proper navigation and communication radio facilities and frequencies.

4. *Flight training.* (a) Each approved course must include at least:

(1) Flight training on the approved areas of operation of paragraph (c) of this section in the aircraft type for which the course applies; and

(2) 10 hours of training of which at least 5 hours must be instrument training in the aircraft for which the course applies.

(b) For the use of flight simulators or flight training devices:

(1) The course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets requirements of this paragraph, and the training is given by an instructor.

(2) Training in a flight simulator that meets the requirements of § 141.41(a) of this part, may be credited for a maximum of 50 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(3) Training in a flight training device that meets the requirements of § 141.41(b) of this part, may be credited for a maximum of 25 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.

(4) Training in the flight simulators or flight training devices described in paragraphs (b)(2) and (b)(3) of this section, if used in combination, may be credited for a maximum of 50 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (b)(3) of this section.

(c) Each approved course must include the flight training on the areas of operation listed in this paragraph, that are appropriate to the aircraft category and class rating for which the course applies:

(1) *A type rating for an airplane—single-engine course:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) In-flight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.

(2) *A type rating for an airplane—multiengine course:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) In-flight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;

(viii) Emergency procedures; and
(ix) Postflight procedures.
(3) *A type rating for a powered-lift course:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) In-flight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.
(4) *A type rating for a rotorcraft—helicopter course:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) In-flight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.
(5) *Other aircraft type ratings specified by the Administrator through aircraft type certificate procedures:* (i) Preflight preparation;
(ii) Preflight procedures;
(iii) Takeoff and departure phase;
(iv) In-flight maneuvers;
(v) Instrument procedures;
(vi) Landings and approaches to landings;
(vii) Normal and abnormal procedures;
(viii) Emergency procedures; and
(ix) Postflight procedures.
5. *Stage checks and end-of-course tests.* (a) Each student enrolled in an aircraft type rating course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation that are appropriate to the aircraft type rating for which the course applies at the airline transport pilot certificate level; and
(b) Each student must demonstrate satisfactory proficiency prior to being endorsed to operate an aircraft in solo flight.

Appendix K to Part 141—Special Preparation Courses

1. *Applicability.* This appendix prescribes the minimum curriculum for the special preparation courses that are listed in § 141.11 of this part.
2. *Eligibility for enrollment.* Prior to enrolling in the flight portion of a special preparation course, a person must hold a pilot certificate, flight instructor certificate, or ground instructor certificate that is appropriate for the exercise of the operating privileges or authorizations sought.
3. *General requirements.* (a) To be approved, a special preparation course must:
(1) Meet the appropriate requirements of this appendix; and
(2) Prepare the graduate with the necessary skills, competency, and proficiency to exercise safely the privileges of the certificate, rating, or authorization for which the course is established.
(b) An approved special preparation course must include ground and flight training on the operating privileges or authorization sought, for developing competency, proficiency, resourcefulness, self-confidence, and self-reliance in the student.
4. *Use of flight simulators or flight training devices.* (a) The approved special preparation course may include training in a flight simulator or flight training device, provided it is representative of the aircraft for which the course is approved, meets requirements of this paragraph, and the training is given by an instructor.
(b) Training in a flight simulator that meets the requirements of § 141.41(a) of this part, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.
(c) Training in a flight training device that meets the requirements of § 141.41(b) of this part, may be credited for a maximum of 5 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less.
(d) Training in the flight simulators or flight training devices described in paragraphs (b) and (c) of this section, if used in combination, may be credited for a maximum of 10 percent of the total flight training hour requirements of the approved course, or of this section, whichever is less. However, credit for training in a flight training device that meets the requirements of § 141.41(b) cannot exceed the limitation provided for in paragraph (c) of this section.
5. *Stage check and end-of-course tests.* Each person enrolled in a special preparation course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation that are appropriate to the operating privileges or authorization sought, and for which the course applies.
6. *Agricultural aircraft operations course.* An approved special preparation course for pilots in agricultural aircraft operations must include at least the following—
(a) 25 hours of training on:
(1) Agricultural aircraft operations;
(2) Safe piloting operating practices and procedures for handling, dispensing, and disposing agricultural and industrial chemicals, including operating in and around congested areas; and
(3) Applicable provisions of part 137 of this chapter.
(b) 15 hours of flight training on agricultural aircraft operations.
7. *Rotorcraft external-load operations course.* An approved special preparation course for pilots of external-load operations must include at least the following—
(a) 10 hours of training on:
(1) Rotorcraft external-load operations;
(2) Safe piloting operating practices and procedures for external-load operations, including operating in and around congested areas; and
(3) Applicable provisions of part 133 of this chapter.
(b) 15 hours of flight training on external-load operations.
8. *Test pilot course.* An approved special preparation course for pilots in test pilot duties must include at least the following—
(a) Aeronautical knowledge training on:
(1) Performing aircraft maintenance, quality assurance, and certification test flight operations;
(2) Safe piloting operating practices and procedures for performing aircraft maintenance, quality assurance, and certification test flight operations;
(3) Applicable parts of this chapter that pertain to aircraft maintenance, quality assurance, and certification tests; and
(4) Test pilot duties and responsibilities.
(b) 15 hours of flight training on test pilot duties and responsibilities.
9. *Special operations course.* An approved special preparation course for pilots in special operations that are mission-specific for certain aircraft must include at least the following—
(a) Aeronautical knowledge training on:
(1) Performing that special flight operation;
(2) Safe piloting operating practices and procedures for performing that special flight operation;
(3) Applicable parts of this chapter that pertain to that special flight operation; and
(4) Pilot in command duties and responsibilities for performing that special flight operation.
(b) Flight training:
(1) On that special flight operation; and
(2) To develop skills, competency, proficiency, resourcefulness, self-confidence, and self-reliance in the student for performing that special flight operation in a safe manner.
10. *Pilot refresher course.* An approved special preparation pilot refresher course for a pilot certificate, aircraft category and class rating, or an instrument rating must include at least the following—
(a) 4 hours of aeronautical knowledge training on:
(1) The aeronautical knowledge areas that are applicable to the level of pilot certificate, aircraft category and class rating, or instrument rating, as appropriate, that pertain to that course;
(2) Safe piloting operating practices and procedures; and
(3) Applicable provisions of parts 61 and 91 of this chapter for pilots.
(b) 6 hours of flight training on the approved areas of operation that are applicable to the level of pilot certificate, aircraft category and class rating, or instrument rating, as appropriate, for performing pilot-in-command duties and responsibilities.
11. *Flight instructor refresher course.* An approved special preparation flight instructor refresher course must include at least a combined total of 16 hours of aeronautical knowledge training, flight training, or any combination of ground and flight training on the following—
(a) Aeronautical knowledge training on:
(1) The aeronautical knowledge areas of part 61 of this chapter that apply to student, recreational, private, and commercial pilot certificates and instrument ratings;
(2) The aeronautical knowledge areas of part 61 of this chapter that apply to flight instructor certificates;
(3) Safe piloting operating practices and procedures, including airport operations and operating in the National Airspace System; and
(4) Applicable provisions of parts 61 and 91 of this chapter that apply to pilots and flight instructors.

(b) Flight training to review:

(1) The approved areas of operations applicable to student, recreational, private, and commercial pilot certificates and instrument ratings; and

(2) The skills, competency, and proficiency for performing flight instructor duties and responsibilities.

12. *Ground instructor refresher course.* An approved special preparation ground instructor refresher course must include at least 16 hours of aeronautical knowledge training on:

(a) The aeronautical knowledge areas of part 61 of this chapter that apply to student, recreational, private, and commercial pilots and instrument rated pilots;

(b) The aeronautical knowledge areas of part 61 of this chapter that apply to ground instructors;

(c) Safe piloting operating practices and procedures, including airport operations and operating in the National Airspace System; and

(d) Applicable provisions of parts 61 and 91 of this chapter that apply to pilots and ground instructors.

Appendix L to Part 141—Pilot Ground School Course

1. *Applicability.* This appendix prescribes the minimum curriculum for a pilot ground school course required under this part.

2. *General requirements.* An approved course of training for a pilot ground school must include training on the aeronautical knowledge areas that are:

(a) Needed to safely exercise the privileges of the certificate, rating, or authority for which the course is established; and

(b) Conducted to develop competency, proficiency, resourcefulness, self-confidence, and self-reliance in each student.

3. *Aeronautical knowledge training requirements.* Each approved pilot ground school course must include:

(a) The aeronautical knowledge training that is appropriate to the aircraft rating and pilot certificate level for which the course applies; and

(b) An adequate number of total aeronautical knowledge training hours appropriate to the aircraft rating and pilot certificate level for which the course applies.

4. *Stage checks and end-of-course tests.* Each person enrolled in a pilot ground school course must satisfactorily accomplish the stage checks and end-of-course tests, in accordance with the school's approved training course, consisting of the approved areas of operation that are appropriate to the operating privileges or authorization that graduation from the course will permit and for which the course applies.

PART 143—GROUND INSTRUCTORS [REMOVED AND RESERVED]

5. Part 143 is removed and reserved.

Issued in Washington, D.C., on March 19, 1997.

Barry L. Valentine,

Acting Administrator.

[FR Doc. 97–7450 Filed 3–27–97; 11:28 am]

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Friday
April 4, 1997

Part III

Department of Transportation

Federal Highway Administration

49 CFR Chapter III

Regulatory Guidance for the Federal Motor Carrier Safety Regulations; Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III

Regulatory Guidance for the Federal Motor Carrier Safety Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Regulatory guidance.

SUMMARY: This document presents interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs) now contained in the FHWA's Motor Carrier Regulation Information System (MCREGIS). The FHWA has consolidated previously issued interpretations and regulatory guidance materials and developed concise interpretive guidance in question and answer form for each part of the FMCSRs. These questions and answers are generally applicable to drivers, commercial motor vehicles, and motor carrier operations on a national basis. All prior interpretations and regulatory guidance of the FMCSRs issued previously in the **Federal Register**, as well as FHWA memoranda and letters, may no longer be relied upon as authoritative insofar as they are inconsistent with the guidance published today. Many of the interpretations of the FMCSRs published on November 23, 1977, and the interpretations of the Inspection, Repair, and Maintenance regulations published on July 10, 1980, have been revised. These revisions are reflected in the new questions and answers. This document also includes regulatory guidance issued since November 17, 1993, when the agency last published a collection of such guidance. Future regulatory guidance will be issued within the MCREGIS which will be kept current in the FHWA's Office of Motor Carrier Standards. The MCREGIS will be updated periodically and published in the **Federal Register** so that interested parties may have ready reference to official interpretations and guidance regarding the FMCSRs. This guidance will provide the motor carrier industry with a clearer understanding of the applicability of many of the requirements contained in the FMCSRs in particular situations.

EFFECTIVE DATE: May 4, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas or Mr. Nathan C. Root, Office of Motor Carrier Standards, (202) 366–1790, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION: This document is an update of the notice of regulatory guidance for the FMCSRs issued by the FHWA November 17, 1993 (58 FR 60734). This notice contains previously issued, revised, and new regulatory guidance pertaining to Title 49, Code of Federal Regulations (CFR), Parts 40, 325, 382, 383, 384, 386, 387, 390 to 393, 395 to 397, and 399 of the FMCSRs. In some instances, old regulatory guidance has been removed. The information published in this document supersedes all previously issued interpretations and regulatory guidance, to the extent they are inconsistent with the guidance published today, including that published on November 23, 1977, at 42 FR 60078, and on July 10, 1980, at 45 FR 46425. To the maximum extent possible, all valid prior opinions have been incorporated into this document. This notice is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, March 29, 1996).

The FHWA issued a final rule on March 8, 1996, which codified most of the regulatory guidance for CDL waivers under § 383.3 (61 FR 9546). Guidance concerning CDL waivers had been issued under § 383.7. From the 1993 Regulatory Guidance notice for § 383.7, only questions 7(a), 8, 9, 10, 16, 17, 21, and 22 still remain. These questions and guidance are now listed as guidance for § 383.3, where the CDL waivers have been codified.

Guidance for question 3 under § 383.5 has been changed to reflect a more expansive version of the same guidance in existence prior to the November 1993 Notice. Guidance for question 2 under § 383.93, as it appeared in the 1993 notice, has been revised to clarify the existing guidance. Guidance for question 1 under § 390.31 has been expanded to include guidance derived from a Final Order issued by the Department (58 FR 62467). Guidance for question 1 of § 391.1 has been changed to remove a reference to part 391 subpart H. Guidance for question 6 under § 391.11 has been moved to § 392.9. Guidance for question 2 under § 391.27 has been removed: violations of size and weight laws are not considered violations of motor vehicle traffic laws. Question 1 for § 391.41 has been changed for clarity. Guidance for question 1 under § 391.43 has been expanded for greater clarity. Guidance for § 392.62 has been moved to § 391.41. Guidance for question 1 of § 393.51, question 1 of § 393.65, question 1 of § 393.75, question 5 of § 393.100, and question 1 of § 393.106 have been amended for clarity. Guidance for question 1 under § 393.95 has been incorporated into the regulations (58 FR 34708) and is therefore removed from this document. Guidance for § 395.1 has been reordered to consecutively follow the paragraphs within the section. Question 15 under § 395.2 was expanded by guidance issued June 11, 1995. Question 20 under § 395.2 has been revised to reflect an interpretation previously issued August 15, 1991, treating the same issue in a more explicit manner. Question 1 under § 397.1 has been changed to more accurately explain who must comply with part 397. The 1994 Regulatory Guidance booklet, which reprinted the interpretations issued in the **Federal Register** in 1993, is available in the public docket on this rulemaking for reference

The FHWA issued an advance notice of proposed rulemaking on November 5, 1996 (61 FR 57252) concerning the hours of service regulations (49 CFR part 395). On page 57258 of the notice, the FHWA erroneously indicated that an interpretation which allowed CMVs to be driven from motels to restaurants in the vicinity as ''off-duty time'' had recently been rescinded. The FHWA intended to rescind *recent* interpretations that describe conditions under which a CMV may be used as a ''personal conveyance'' (issued August 10, 1995), and address the entire issue of personal conveyance through notice and comment rulemaking. Question 8 under § 395.2 has been expanded by guidance issued November 18, 1996, and placed more appropriately under § 395.8 (see § 395.8, question 27). All prior interpretations of personal conveyance are invalid.

Since 1993, new interpretive guidance has been issued for, or existing guidance has been removed from, the following sections:

49 CFR Part 40 §§ 40.3, 40.21, 40.23, 40.25, 40.29, 40.31, 40.33, 40.35, 40.39, 40.69, 40.81, 40.93, Special Topics—Requirements for Random Testing, Special Topics—Procedures for Handling and Processing a Split Specimen

49 CFR Part 382 §§ 382.103, 382.105, 382.107, 382.109, 382.113, 382.115, 382.204, 382.205, 382.213, 382.301, 382.303, 382.305, 382.307, 382.401, 382.403, 382.405, 382.413, 382.501, 382.507, 382.601, 382.603, 382.605, Subpart B—Prohibitions, Special Topics—Responsibility for Payment for Testing, Special Topics—

Multiple Service Providers, Special Topics—Medical Examiners Acting as MRO, Special Topics—Biennial (Periodic) Testing Requirements
49 CFR Part 383 §§ 383.3, 383.5, 383.7, 383.31, 383.71, 383.73, 383.91, 383.93, Special Topics—International
49 CFR Part 384 §§ 384.209, 384.211
49 CFR Part 387 §§ 387.9, 387.15, 387.39
49 CFR Part 390 §§ 390.3, 390.5, 390.15, Special Topics—Serious Pattern of Violations
49 CFR Part 391 §§ 391.1, 391.11, 391.27, 391.41, 391.43, 391.49, 391.51, 391.63
49 CFR Part 392 §§ 392.5, 392.9, 392.62
49 CFR Part 393 §§ 393.11, 393.42, 393.48, 393.51, 393.65, 393.75, 393.89, 393.95, 393.100, 393.106, 393.201
49 CFR Part 395 §§ 395.1, 395.2, 395.8, 395.13, 395.15
49 CFR Part 396 §§ 396.11, 396.17, 396.23

Additional guidance will continue to be published in future issues of the **Federal Register**. The FHWA will be modifying or removing numerous regulations as part of President Clinton's Regulatory Reform Initiative. Many of these changes will have an impact on the regulatory guidance in this document. These changes will be reflected in future issues of the **Federal Register**. Members of the motor carrier industry and other interested parties may access the guidance in this document through the FHWA's Electronic Bulletin Board System (FEBBS) using a microcomputer and modem. The FEBBS is a read-only facility. Access numbers for FEBBS are (202) 366–3764 for the Washington, DC area, or toll-free at (800) 337–3492. The system supports a variety of modem speeds up to 14,400 baud line speeds, and a variety of terminal types and protocols. Modems should be set to 8 data bits, full duplex, and no parity for optimal performance. Once a connection has been established, new users will have to go through a registration process. Instructions are given on the screen. FEBBS is mostly menu-drive and hot keys are indicated with ''< >'' enclosing the hot key. After logging on to FEBBS and arriving at the MAIN MENU, select <C> for Conference; then <M> for Motor Carrier; then either <M> again for MCREGIS Questions and Answers, or <I> for Information (more detailed help).

For Technical Assistance to gain access to FEBBS, contact: FHWA Computer Help Desk, HMS–40, room 4401, 400 Seventh Street, SW, Washington, DC 20590 (202) 366–1120. Specific questions addressing any of the interpretive material published in this document may be directed to the contact persons listed above, the FHWA Regional Offices, or the FHWA Division Office in each State.

For ease of reference, the following listing of acronyms used throughout this document is provided:

Appendix G—The Minimum Periodic Inspection Standards published as an appendix to the Federal Motor Carrier Safety Regulations
BAT—Breath Alcohol Technician
CDL—Commercial Driver's License
CDLIS—Commercial Driver's License Information System
CFR—Code of Federal Regulations
CMV—Commercial Motor Vehicle
CMVSA—Commercial Motor Vehicle Safety Act of 1986
COE—Cab-over-engine truck tractor
C/TPA—Consortium or Third-Party Administrator
CVSA—Commercial Vehicle Safety Alliance
DHHS–SAMHSA—Department of Health and Human Services, Substance Abuse Mental Health Services Administration
DOT—U.S. Department of Transportation
DVIR—Driver Vehicle Inspection Report
DWI—Driving While Intoxicated
EAP—Employee Assistance Program
EPA—U.S. Environmental Protection Agency
FHWA—Federal Highway Administration
FMCSRs—Federal Motor Carrier Safety Regulations
FMVSS—Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration)
FR—Federal Register
FRSI—Farm-Related Service Industries
GCWR—Gross Combination Weight Rating
GVW—Gross Vehicle Weight
GVWR—Gross Vehicle Weight Rating
HM—Hazardous Materials
HMRs—Hazardous Materials Regulations
HMTUSA—Hazardous Materials Transportation Uniform Safety Act of 1990
ICC—Interstate Commerce Commission
Forms MCS–90 and MCS–90B—Endorsements for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980 issued by an insurer
MCSA—Motor Carrier Safety Act of 1984
MPH—Miles Per Hour
MRO—Medical Review Officer
NDR—National Driver Register
NHTSA—National Highway Traffic Safety Administration within DOT
RDMC—Regional Director of Motor Carriers
SAP—Substance Abuse Professional
SSN—Social Security Number
STAA—Surface Transportation Assistance Act of 1982
STT—Screening Test Technician
U.S.C.—United States Code

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Regulatory Guidance

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Section 40.3 Definitions

Question 1: May a Doctor of Chiropractic, holding a Certified Addiction Professional degree, serve as an MRO?

Guidance: A Doctor of Chiropractic, holding a Certified Addiction Professional degree, is not considered to be a licensed medical doctor or doctor of osteopathy and, therefore, cannot serve as an MRO.

Question 2: What are the qualifications and responsibilities of the MRO? Are MROs required to be certified?

Guidance: Section 40.3 defines the qualifications for an MRO and § 40.33 specifies the MRO's responsibilities. An MRO is defined as a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory

results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. An MRO is responsible for reviewing and interpreting confirmed positive test results obtained through the employer's testing program. The DOT does not require any certification of MROs at the present time. However, there are several national professional organizations which provide MRO certification.

Section 40.21 The Drugs

Question 1: Is testing for additional drugs authorized? Must a separate specimen be obtained?

Guidance: Under part 40, an employer must test for the following drugs: marijuana, cocaine, amphetamines, opiates, and phencyclidine. An employer may not test for any other substances *under DOT authority.* Part 40 does not, however, prohibit an employer from testing for other controlled substances *as long as that testing is done under the authority of the employer.*

Employers in the transportation industry who establish a drug testing program that tests beyond the five drugs currently required by part 40 must also make clear to their employees what testing is required by DOT authority and what testing is required by the company. Additionally, employers must ensure that DOT urine specimens are collected in accordance with the provisions outlined in part 40 and that a separate specimen collection process including a separate act of urination is used to obtain specimens for company testing programs.

Question 2: Should labs conduct tests for five (5) drugs even if the drug testing custody and control form fails to indicate what tests are to be performed?

Guidance: Part 40 indicates that DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines, and phencyclidine (§ 40.21). All DOT specimens, therefore, must be tested for the above five categories of drugs even if the accompanying drug testing custody and control form fails to indicate this.

While the DOT does not view this type of collection site error as a fatal flaw, it nevertheless jeopardizes the integrity of the entire collection process and could lead to a challenge and subsequent third party review. These errors should be addressed with the site supervisor in the hope of preventing future mistakes.

Section 40.23 Preparation for Testing

Question 1: On the testing of a split specimen, is it necessary to maintain anonymity of a person, at the laboratory level, when both the primary laboratory and the laboratory testing the split may have fees and could directly bill the employee?

Guidance: Section 40.23(a) addresses mandatory use of the Federal Drug Testing Custody and Control Form in DOT urine collection and testing. This paragraph states, in part, that ''* * * personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory.'' If circumstances arise in which the MRO orders a test of the split specimen, at the request of the employee, no additional identifying information on the employee may be provided to the laboratory that will be testing the split specimen. As directed by § 40.33(f), ''* * * The MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis.'' This request would reference only items contained on the face of the Drug Testing Custody and Control Form (e.g., Specimen Identification No., SSN or Employee ID No., Collection Date, etc.); the MRO would not specify the employee's name. Should a personal check (bearing the employee's name) accompany the request (e.g., a letter from the MRO), the MRO should not make any particular reference linking the split request with the person signing the check. In actuality, the primary laboratory will most likely bill the employer for the cost of sending the split specimen to the split laboratory; the split laboratory will normally require a cashier's check, money order, or an account to be set up (generally by the employer) prior to initiating processing.

Question 2: In a case where an employee is providing a urine specimen *and* a breath test is conducted *at the same time,* may a laboratory receive both the Federal Drug Testing Custody and Control Form (with the specimens for testing) and the employer's copy of the Breath Alcohol Testing Form (with the test results) from the collection site?

Guidance: The DOT provided clarification in its *Guidance on the Role of Consortia and Third-Party Administrators in DOT Drug and Alcohol Testing Programs* published on July 25, 1995 in the **Federal Register** which stated in part ''* * * MROs and BATs must send final individual test results directly to the actual employer as soon as the results are available * * * results may be maintained afterwards by the C/TPA * * * while there is no objection to the MRO or BAT transmitting results simultaneously both to the employer and to the C/TPA, it is not appropriate for the MRO or BAT to send the results only to the C/TPA, which subsequently retransmits them to the employer.''

A laboratory, regardless of what type of arrangement it has with the employer, is prohibited from receiving the employer's copy of the Breath Alcohol Testing Form *together* with the Federal Drug Testing Custody and Control Form(s) which accompany the urine specimen. The breath testing form contains individual identifying information. The DOT rule specifically states that this information may not be provided to a laboratory.

However, a laboratory functioning as a C/TPA may receive the employer's copies of the Federal Drug Testing Custody and Control Form and the employer's copy of the Breath Alcohol Testing Form from the collection site under the following conditions:

a. The employer's copy of the Federal Drug Testing Custody and Control Form (Copy 7) *must not* be included with the laboratory copies (Copies 1 and 2) which accompany the urine specimen.

b. The employer's copies of the Federal Drug Testing Custody and Control Form and the Breath Alcohol Testing Forms *must not* be received by the accession/receiving (testing) section of the laboratory.

These procedures should prevent that portion of the laboratory which conducts the drug analysis from having access to the identity (from the alcohol testing form) of the donor.

The DOT rule requires the BAT immediately to transmit the results to the employer, regardless of what procedures have been established for providing to the employer or the C/TPA, the employer's copy of the breath testing form.

In all instances, it is the employer (not the C/TPA) who designates in writing to the BAT or the BAT's company, who the employer's agent is and the procedures that the employer wants the BAT to use for transmission of data and forms.

Question 3: Is a specific MRO name required in Step 1 on the Federal Drug Testing Custody and Control Form, or may a clinic, hospital, health care organization, or MRO company name appear in the MRO Name and Address area?

Guidance: The DOT has determined that a specific physician's name and address *is required* in Step 1 of the

Federal Drug Testing Custody and Control Form as opposed to only a generic clinic, health care organization, or company name. The name should be that of a responsible physician rather than an administrative staff member or other company official. However, a company name may appear as part of the address, provided it is followed by or includes the MRO's name. Collection sites send copies of the MRO's custody and control form to this address, and drug testing laboratories use it to submit laboratory results to the MRO. The use of the MRO name will preclude potential compromises of confidentiality. In many cases, where only the name of a clinic, hospital or company appears on the mailing address, the laboratory results are sent to the clinic or hospital and are either circulated through numerous departments or, in some cases, never reach the MRO.

The physician named in Step 1 may be the MRO who will actually perform the verification review or the name of a physician within the practice (company), but not necessarily the one who will actually perform the verification (in those cases where there is more than one MRO working in that office or company).

Question 4: Is the collector's signature required on the chain of custody section of drug testing custody and control form?

Guidance: The collector's signature is required in both the ''received by'' and the ''released by'' spaces in Step 6 of the drug testing custody and control form. Part 40 Appendix A specifies that the form shall provide both ''received by'' and ''released by'' entries of the collector's signature and printed names (see the instructions on the back of Appendix A, copy 7, Step 6. Combining these entries is not authorized by the rule.

Question 5: May the drug testing custody and control form be used for non-DOT tests?

Guidance: Employee drug testing conducted under local, State, or private authority must not be represented to the employee as being Federally mandated or required. The use of the custody and control form required under 49 CFR part 40 conveys that the testing is being conducted in accordance with applicable Federal regulations. A ''look-alike'' form that deletes references to DOT, Part 40, and Federal requirements may be used for non-DOT testing.

Question 6: Is collection of blood authorized? May blood specimens be supported by the drug testing custody and control form? May blood test results be used to take DOT-required administrative actions?

Guidance: The collection of blood for alcohol or drug testing under DOT authority is not authorized. Therefore, while a company, under its own authority, may require a blood specimen to be collected and tested for drugs and/or alcohol under certain circumstances, it is not acceptable for the company-required blood specimen to be supported by the same custody and control form that accompanies a DOT-required urine specimen.

If a urine specimen for a DOT reasonable suspicion test is rejected for testing at the laboratory, results from a blood specimen collected in accordance with a company policy could be used to take action against an employee depending upon the drug testing policy established by that company. Under no circumstances, however, may the results of the blood test be used to take administrative or disciplinary action against an employee using DOT authority, for the reasons cited above.

Question 7: Is the collector required to sign or initial the shipping container label?

Guidance: Sections 40.23(c) and 40.25(h) describe the requirements for packaging the specimen and custody and control form in preparation for shipment to the laboratory. Section 40.23(c) states that the shipping container must be sealed and initialed to prevent undetected tampering. Section 40.25(h) states that the collection site person shall sign and enter the date specimens were sealed in the shipping containers for shipment. The DOT has determined that initialing and dating the seal by the collection site person is sufficient to meet the intent of the regulation.

Question 8: How and to whom are copies of drug testing custody and control forms distributed?

Guidance: The historically acceptable procedures for handling the custody and control form have been as follows: Parts 1, 2, and 3 must accompany the urine specimen in a sealed shipping container to the laboratory; Part 3 (Split Specimen) must be retained by the laboratory in case the split specimen must be sent to a second laboratory; Part 4 must be sent from the collection site directly to the physician (MRO); Part 5 is given to the donor at the collection site; Part 6 is retained by the collection site personnel; and Part 7 is provided to the employer representative. It is unacceptable for the MRO copy of the form to accompany the urine specimen to the laboratory. Clearly the intent of the regulation is for the urine specimen and Parts 1, 2, and 3 of the Federal custody and control form to be sent directly from the collection site to the laboratory, and the MRO (Part 4) copy of the custody and control form to be sent directly to the physician. There is no need to maintain a chain of custody tracking the handling of the sealed shipping container. In fact, the August 19, 1994 **Federal Register** (59 FR 42996) expressly notes this fact in changes to § 40.25 to clarify this point.

Question 9: Should a specimen be rejected by a lab if the donor-identifying information is erroneously provided?

Guidance: The intent of the DOT procedures is to limit the amount of personal identifying information that is recorded on the specimen bottle and those copies of the drug testing custody and control form that accompany the specimen bottle to the laboratory. The rule only requires that a donor initial the specimen bottle label/seal and provide an SSN or employee identification number to be recorded on the laboratory copies of the drug testing custody and control form. The rule does not allow for additional personal information to be provided to the laboratory. In fact, the intent was to prevent the donor's identity from being *routinely* disclosed to the laboratory.

It was never intended, however, that the *inadvertent or erroneous* disclosure of the donor's identity (i.e., name or signature) on the specimen bottle or laboratory copies of the drug testing custody and control form be a justification, in and of itself, for a laboratory to reject the specimen for testing or for an MRO to invalidate the test results. Furthermore, all accessioning procedures at laboratories certified by the DHHS–SAMHSA requires that specimens be identified by specimen identification number, donor identification number, and laboratory accession number only. Even though laboratory accessioning personnel may have access to a donor's name in these cases, the analytical personnel will not. Therefore, the donor's identity is still protected during the actual testing process.

Question 10: Must the collector provide a real name on the collector certification section of drug testing custody and control form?

Guidance: The intent of the DOT drug testing custody and control form is to provide complete documentation of the specimen collection process including the name of the collector and the location of the collection site. The collection site person who receives the urine specimen from the donor should be identified by name on the block specifying ''collector's name.'' Use of a ''code name,'' collector I.D. number, or

other substitution for the collector's name is not acceptable. The collector's name should be the same as that appearing on the identification each collector is required to make available to the donor, if so requested.

Section 40.25 Specimen Collection Procedures

Question 1: Under what circumstances must an employee be observed while submitting a urine sample? Under what circumstances is observation an optional choice of the employer?

Guidance: A direct-observation collection is *mandatory* only when the collection site person observes behavior clearly indicating an attempt to tamper or when the specimen temperature is outside the normal range and an oral body temperature reading is refused or is inconsistent with the specimen temperature.

The collection site person would contact a higher-level supervisor, or a designated employer representative, to relay the circumstances which require the observed collection. The supervisor or representative would review the circumstances for compliance with Part 40 requirements, and finding such, would approve in advance the decision to do the observed collection. The collection site person—of the same gender as the employee—would immediately conduct the observed collection.

The *employer has the discretion* to require the employee to provide a specimen under direct-observation collection procedures for the return-to-duty test and any subsequent follow-up tests. The employer also has the authority to require an employee to provide a specimen under direct-observation procedures when the specific gravity *and* creatinine content of the employee's previous sample are below the regulatory standards. In the latter case, the MRO would receive the test results from the laboratory (i.e., positive, negative, or in the case where no immunoassay result is reported) along with information that the specimen had a specific gravity of less than 1.003 *and* creatinine concentration less than 0.2g/L. The MRO would inform the employer of the laboratory findings. The employer would make the decision to do a direct-observation collection on the employee on the next DOT test that the employee is required to take.

It would be the employer's responsibility to notify the employee of the decision to exercise the option to do the collection(s) under the direct-observation procedure. The employer would authorize the collection site person to do the observed collection(s), as applicable. Directly observed collections are always performed by a collector of the same gender as the employee.

Question 2: In a ''shy bladder'' situation, if the physician conducting the medical examination is not the MRO, may that physician report his/her conclusions directly to the employer? Also, if a company has a corporate or contract physician, may that physician perform the examination?

Guidance: The rule does not preclude the MRO from performing this medical evaluation if the MRO has the expertise and is willing to conduct this evaluation. The DOT's requirement that the MRO review the results of the medical evaluation is related to the fact that the MRO may have additional information on the circumstances surrounding the attempt to provide the urine specimen, other pertinent information regarding the collection process, problems or lack of problems during previous collections, etc.

All reporting to the employer regarding the final determination on the results of a urine specimen is accomplished by the MRO. This includes the findings and conclusions of the medical examination.

If a company has a physician on the staff or has a contract physician, this individual may perform the medical examination if he/she has the required expertise. The company should ensure that the MRO is informed of this arrangement and makes the referral to that particular physician. However, the requirement still exists to submit the findings of the evaluation to the MRO, who then reports his/her conclusions to the employer. A company may also designate its staff physician or contract physician as the MRO if that individual meets the regulatory criteria.

Question 3: In a ''shy bladder'' scenario, may an employer require an individual to provide a specimen within three hours, and if the individual doesn't provide a specimen, is the inability considered to be a refusal?

Guidance: The individual must provide the specimen within three hours. The inability to provide does not automatically mean that the individual being tested will be deemed to have refused testing. The required medical evaluation would produce the information which the MRO will use to draw final conclusions. If the finding by the MRO is that there was no legitimate medical reason for the individual's inability to provide the sufficient quantity of urine, then this finding constitutes a refusal. A refusal to provide a specimen has the same sanctions under the DOT rule as a positive test.

Once it has been determined that the employee has violated a DOT rule (e.g., verified positive test, refusal), the employee must be immediately removed from performing any safety-sensitive duties. The employee may not again perform safety-sensitive duties until he or she has met the conditions of the applicable operating administration (e.g., Federal Highway Administration) rule for return to duty. The DOT rule does not address employer policies on subsequent personnel actions.

Question 4: In a ''shy bladder'' scenario, does DOT consider a company's ordering the donor back to work prior to completion of the time and fluid intake period an obstruction of the collection process? Or, is the donor's failure to complete the collection, after having been compelled by the employer to leave the collection site, considered a refusal to test if no medical reason is provided for donor's failure to provide the required amount of urine?

Guidance: A company's ordering the employee to return to work prior to the expiration of the time period, with no provisions for personal observation or for ensuring the employee's return to the collection site, appears to be in clear violation of DOT rules. The employer is not authorized to discontinue a test or to conduct a subsequent collection at a later time in lieu of a current collection. The employer could order the employee back to work while waiting for the three-hour period to elapse, but the employer must ensure that the employee drinks the prescribed amount of liquids, is under observation during the entire period of time, and returns to the collection site prior to the expiration of the three hours.

It should be noted that because the donor was not afforded the full time period during which to provide a specimen, the donor's inability to provide the required amount of urine does not constitute a refusal to test but is the result of employer hindrance with the collection process. The MRO should advise the employer of its violation of 49 CFR part 40 and propose corrective action accordingly (i.e., establish correct policy). In addition, the MRO may report the violation to the appropriate DOT operating administration or may request that the DOT Drug Enforcement and Program Compliance office report the matter. The company is required to maintain, in accordance with the appropriate governing regulation, a record of this ''test'' for review by a DOT operating administration in the event of an audit.

Question 5: Is a current and valid picture/photo identification required before a urine collection takes place or may a physical description verification by telephone by an employer representative suffice?

Guidance: The rule does not address if the photo identification is current nor does it prohibit telephonic verification of identity. The intent of the rule was that if the employee did not have proper identification, an employer's representative would be on site to identify that employee. There is no requirement that the representative sign any type of form, although procedures should be established to ensure the true identity of the representative.

If telephonic identification is used, specific procedures should be in place to ensure that the employer representative is fully identified to the collection site person and that reasonable procedures exist to ensure that the employer's representative can truly identify the employee. If the employee's identification cannot be established to the satisfaction of the collection site person (or based on the collection site protocol for identification), the collection should not be completed. Additionally, any identification procedure allowed under specific DOT operating administration's rules is also permissible.

Exception: If the donor is self-employed and has no photo identification, the collector should notify the collection site supervisor and record in the remarks section that positive identification is not available. The donor must be asked to provide *two* items of identification bearing his/her signature. Proceed with the collection. When the donor signs the certification statement, compare the donor's signature with signatures on the identification presented. If the signatures appear consistent, continue the collection process. If the signature does not match signatures on the identification presented, make an additional note in remarks section stating that ''signature identification is unconfirmed'' and continue the collection process.

When this (self-employed) donor does not have appropriate identification this should *not* be considered a refusal. The collector should remember that his/her primary function is to obtain a specimen that can be tested for drugs under DOT rules. The collector should provide sufficient information in the remarks section to help the MRO make a determination regarding the merit of the collection process or for the employer to determine if there are systemic problems or other shortfalls in its policy/program.

Question 6: May a urine specimen collection site be constructed to have two or more collectors or must each collection ''station'' be physically separated by a barrier or wall to ensure modesty and privacy of the donor?

Guidance: In specifying privacy and security of the collection site, the DOT was concerned that the act of urination by a donor would have maximum privacy under most circumstances and that the specimen sample would be under sufficient security to prevent any allegation of tampering. Additionally, the regulatory requirement exists that the collection site person have only one donor under his/her supervision at any one time. In other words, one collection site person may not process the paperwork or collect a specimen from more than one donor at a time. There are collection sites, particularly at health clinics, that may have ''stations'' or booths which are partially partitioned from each other or from the rest of the clinic. The collection site person usually gathers relevant information from the donor at the booth, completes the necessary paperwork, and escorts the donor to a toilet area where the donor can provide a specimen in privacy.

The rule does not permit unauthorized personnel in any part of the designated collection site where urine specimens are collected or stored. In the multiple booth situation, another collection site person would not be considered an unauthorized person. However, when other donors are present in a waiting area or another donor is being processed by another collection site person, the integrity of the specimen must be ensured. During the collection process, the collection site person must ensure that the specimen is under his or her direct control from the time the specimen is provided by the donor to the time it is sealed in the mailer. Additionally, regardless of the physical configuration of the collection site, there is the expectation that the donor will have some semblance of aural and visual privacy. For example, a donor may tell the collector that he/she is suffering from a particular illness, is on medication, or that he/she has an indwelling catheter, and wonder if this will impact on the test results. The donor should be able to make these statements without embarrassment or concern that another individual (i.e., another collector or donor) may overhear or see what the donor is providing to the collector.

Question 7: May donors be required to remove all clothing, wear a hospital gown, or empty pockets?

Guidance: The DOT's procedures for transportation workplace drug testing programs contained in § 40.25(f)(4) states: ''The collection site person shall ask the individual to remove any *unnecessary outer garments* such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.'' (Emphasis added.)

While it is clear that the rule does allow for collectors to request that donors remove unnecessary outer garments in order to ensure the integrity of the collection, the rule does not authorize collectors to require or request that donors remove other garments as well, e.g. shirts, blouses, pants, or skirts, thereby ensuring a modicum of privacy and reducing potential embarrassment. Additionally, donors may not be required or requested to wear hospital or examination gowns when providing a specimen.

There is an exception to the above. The DOT has determined that if a urine specimen is being collected as part of a DOT-required physical examination (i.e., § 391.43 Medical examination; certificate of physical examination) in which an individual is required to disrobe and wear a hospital or examination gown, the collection may be completed with the donor so attired.

It should also be noted that if a collection site person, during the course of a collection procedure, notices an unusual indicator that an individual may attempt to tamper with or adulterate a specimen as evidenced by a bulging or overstuffed pocket for example, the collector may request that the donor empty his or her pockets, display the items, and explain the need for them during the collection. This procedure may be done only when there is a suspicion that an individual may be about to tamper with or adulterate a specimen. Otherwise, requiring donors to empty their pockets as a common practice is also prohibited under the current rules.

Question 8: Please clarify donor identifying information requirements on the drug testing custody and control form.

Guidance: In accordance with § 40.25(f)(20), the donor/employee is required to initial the specimen bottle seal/label. The employee/donor's identification number or SSN is to be

provided on the custody and control form and shall not be included on the specimen bottle seal/label. Other donor identification (i.e., name, signature) should not be provided on the copies of the custody and control form that accompany the specimen to the laboratory. However, disclosure of the donor's name/signature does not, in and of itself, require that the specimen be rejected for testing by the laboratory.

Question 9: Is a consent form authorized?

Guidance: Section 40.25(f)(22)(ii) states, ''When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer.'' The purpose of this statement is to allow collection sites or laboratories, of their own accord, or when required by a DOT agency regulation, to utilize consent or release of information forms for the collection, analysis, and release of specimen results to the employer. § 40.25(f)(22)(ii) continues, ''The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling, or analysis of the specimen or to indemnify any person for the negligence of others.'' The intent of this statement is to prevent anyone who participates in either the collection, handling, or analysis of the specimen from trying to require the employee to exempt them from liability arising from their actions. This pertains not only to collection site and laboratory personnel, but also to MROs, their staff, if applicable, and to the employer. Failure of an employee to sign the consent form does not equal a refusal to test and the test must proceed in all circumstances. The DOT also intends that this interpretation shall be followed for alcohol testing requirements.

Question 10: Is the donor's presence required when the collector prepares a specimen for shipment?

Guidance: The tamper-proof seal placed on the specimen bottle must be affixed in the presence of the donor, but the regulation is clear that the donor does not have to be present when the specimens are prepared for shipment to the laboratory. The collection site person is the only person required to sign or initial the seal on the shipment container. In fact, the rule allows the use of shipment containers that accommodate multiple specimen bottles. It would be impossible to have more than one donor witness the sealing of their specimen bottles in one shipment container when collectors are required by rule to deal with only one donor at a time.

Question 11: In a post-accident situation requiring both a company test and a DOT test, which should be conducted first?

Guidance: In a post-accident situation in which drug/alcohol testing is required under company authority or policy, and DOT-mandated tests are required, the DOT tests must be conducted first.

Question 12: Please address the issue of low specific gravity/creatinine.

Guidance: Laboratory reports. The laboratory may report in the laboratory remarks section of the custody and control form that specific gravity is less than 1.003 and creatinine is less than 0.2 grams per liter. Actual values of specific gravity and creatinine should not be reported.

Medical Review Officer Interpretations MROs shall report the laboratory findings (positive, negative or not tested (canceled)) to the employer and that specific gravity *and* creatinine are below 1.003 and 0.2 g/l, respectively.

Employer Actions The employer shall not require the driver to submit to another specimen collection under FHWA authority. A dilute specimen does not constitute reasonable suspicion of controlled substance use. The employer *may* require the next specimen, required by DOT regulations, submitted by the driver to be collected under direct observation.

Question 13: What should donors do if specimen collection procedures are not being followed?

Guidance: Under DOT agency regulations, the employer is responsible for ensuring that specimens are collected in accordance with part 40. If the employees subject to DOT-mandated drug testing regulations believe that part 40 collection procedures are not being followed, they should so inform the employer. If the employer does not respond to the complaints and take appropriate corrective actions, the employees may seek resolution of their complaints through a DOT agency that has regulatory authority over the employer.

Question 14: Is failure to check the temperature box on the drug testing custody and control form considered a fatal flaw?

Guidance: In accordance with § 40.29, the collector is to check the temperature of the specimen to ensure the integrity of the specimen. The fact that it was checked should be marked appropriately on the custody and control form. Inadvertently *not* marking the temperature-taken box, in and of itself, does not constitute a ''fatal flaw'' in the DOT chain of custody process.

Question 15: What are the collection site requirements?

Guidance: Section 40.25(a)–(b) outlines employer requirements for designating and maintaining the security of collection sites. To summarize the contents of this section, a collection site must at a minimum provide: (1) An enclosure where privacy for urination is possible; (2) A toilet for urination (unless a single use, disposable container is used with sufficient capacity to contain the entire void); (3) A source of water for washing hands; (4) A suitable writing surface for completing the required paperwork (custody and control form); and (5) Restricted access so that the site is secure during collection.

Any facility, including a physician's office, that meets the minimum requirements may be used as a collection site for DOT-required drug tests. It is the employer's responsibility to not only designate and ensure that collection sites meet these minimum requirements, but also to ensure that collection site personnel at these locations are properly trained and/or qualified to collect urine specimens in accordance with the provisions outlined in 49 CFR part 40.

Question 16: Are middle names required on the drug testing custody and control form?

Guidance: Section 40.25(a) specifies that the custody and control form used to document DOT mandated drug testing shall provide space for collector, donor, and laboratory certifying scientist names and signatures. The regulation does *not* specify that a middle name or initial must be used. The intent of the regulation is to provide for the identification of the person(s) signing the certification statements. The use of supplemental instructions on the custody and control form (e.g. further defining name to include first, middle, last), does not impact on the security, identification, or integrity of the urine specimen and should not be used as a basis for invalidating the specimen results.

Section 40.29 Laboratory Analysis Procedures

Question 1: May a laboratory provide ''one-stop shopping'' to an employer by including the services of a MRO or a list of MROs (which the laboratory does not employ) from which the employer or client could select a specific MRO?

Guidance: Under current DOT interpretation of the rule, a laboratory

would be prohibited from supplying a limited list of MROs from which the employer would select individuals that would provide MRO services. In this circumstance, there is a clear financial advantage to the MROs who appear on the laboratory list, since this makes them among the candidates for use by that laboratory's clients. This advantage could readily be viewed as providing these MROs an incentive to maintain a good relationship with the laboratory, so as to ensure that they remain on the list, which is in their financial interest. The existence of this incentive could, in turn, call into question the objectivity and independence of the MROs in the review of the test results and the reporting to relevant officials of any potential errors in test results or procedures. The regulatory prohibition is not limited to actual, demonstrated conflict of interest. It includes matters that ''may be construed as a potential conflict of interest''. The DOT position is that the above described laboratory arrangement presents the appearance of a conflict of interest.

Question 2: May a laboratory continue to submit monthly summary reports to the employer/consortia or is the laboratory limited to quarterly reports only?

Guidance: The DOT changed the requirement for a monthly statistical report to a quarterly report to provide cost savings to the industry without substantially decreasing the effectiveness of the report. Although the original regulatory language appears to require reporting only on a quarterly basis, the intent of this change was to require, *as a minimum,* a quarterly report, but not to limit those employers or laboratories who desired monthly reports. Monthly reports may be generated provided the reports do not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred. If a laboratory provides monthly reports, there is no requirement to additionally provide a quarterly aggregate report. Likewise, the regulatory requirement to prevent individual identifying information remains for both monthly and quarterly reports. If a report is withheld for this reason, the laboratory will notify the employer.

Question 3: Explain the requirements for quarterly lab summaries.

Guidance: Section 40.29(g)(6) requires each laboratory to ''provide the employer an aggregate quarterly statistical summary of urinalysis testing of the employer's employees. Laboratories may provide the report to a consortium provided the laboratory provides employer-specific data and the consortium forwards the employer-specific data to the respective employers within 14 days of receipt of the laboratory report.''

The above reference also contains the following information: ''Quarterly reports shall not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any quarter in which a report is withheld for this reason, or because no testing was conducted, the laboratory shall so inform the consortium/employer in writing.''

As referred to above, the DOT has held that during a quarter in which there was ''no activity'' the laboratory is still required to inform the employer, in writing, of the negative activity. This provision is necessary to assist Federal auditors during inspections of employers that are required by an Operating Administration to conduct a drug testing program. Unless the auditor has a complete quarter-by-quarter history and record of drug testing results from a laboratory, there is nothing to preclude an employer, for example, from destroying a quarterly summary that does contain a confirmed positive result and claim that there simply was no activity during the month. This, of course, would allow the company to continue to use that individual in a safety-sensitive function with no evidence that there was a confirmed positive drug test result. In effect, the negative lab report serves as an important check and balance used by auditors in their compliance and enforcement efforts.

Question 4: May labs transmit results to an MRO by faxing Part 2 of drug testing custody and control form?

Guidance: Laboratory test results may be provided to the MRO via facsimile transmission of the custody and control form. However, the ''true copy'' of the custody and control form must also be sent to the MRO. The purpose of permitting facsimile transmission of the custody and control form is to facilitate a quicker administrative review of test results by the MRO. The MRO may complete verification of a negative result based on the facsimile of the custody and control form; however, the verification of a positive result cannot be completed until the ''true copy'' of the custody and control form bearing the original signature of the laboratory's certifying scientist is received by the MRO.

Question 5: May a lab certifying scientist use a ''signature stamp''?

Guidance: In accordance with § 40.29(g)(5), ''in the case of a positive report for drug use [the drug testing custody and control form (part 2)], shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports.* * *''

In accordance with § 40.29(g)(1), ''Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual.'' The DOT's opinion is that negative reports must be reviewed and the test certified as an accurate report by the laboratory's responsible individual. This certification must be accomplished by a signature for positive test results while a signature stamp with initials for negative test results on the custody and control form may be used.

Question 6: Does the regulation require lab ''batch reporting'' of drug test results?

Guidance: The laboratory may report results to the MRO as soon as the results have been reviewed by the appropriate laboratory personnel. There is no requirement for ''batch reporting,'' or reporting simultaneously all results for specimens received in a given shipment. Nor does part 40 require ''batch reporting'' of results by the MRO to the employer. Batch reporting, which causes the transmission of negative results before positive results have been verified, may create a problem by leading an employer to make premature assumptions about a particular test result. However, the rule provides no authority for an employer to take any adverse action against an employee whose test result is pending. The differences in reporting time of test results may be due to a variety of circumstances including laboratory processing time, MRO administrative review processes for negatives, or the verification process for positives.

Question 7: Is a lab required to send results directly to the MRO?

Guidance: Yes. Section 40.29(g) requires confidentiality and limited access to laboratory test results, and the laboratory must send *only to the MRO* the original or a certified true copy of the drug testing custody and control form (Part 2). Furthermore, § 40.33(b)(3) states: ''The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's

testing program.'' Section 40.33(c)(2) states: ''The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee.''

Given the above, it should be clear that the intent of the current regulations is that all laboratory test results be sent directly to the MRO. When the test result is positive, the MRO must make the verification determination; when the test result is negative, the MRO may delegate to a person *under his/her direct supervision* the administrative review of the negative results.

Question 8: Does the regulation allow the MRO to disclose to the employer the drug(s) involved in a positive test?

Guidance: Section 40.29(g)(3) requires MROs to report to employers whether the drug test was positive or negative. It also *allows* the MRO to report the drug(s) for which there was a positive test.

Section 40.31 Quality Assurance and Quality Control

Question 1: Please explain the timing of blind performance test specimens.

Guidance: Section 40.31(d) delineates employer and consortia blind performance test requirements. The intent of these requirements is to test the laboratory's ability to correctly identify positive and negative samples. These samples are to be unidentifiable as blind samples by the laboratory.

The regulation does not specify the distribution or the timing of the submissions except to stipulate in § 40.31(d)(2) that each ''employer shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter.'' This is the basic requirement. The optimum program would be to evenly space the submission of blind samples throughout the period.

Section 40.33 Reporting and Review of Results

Question 1: Does the MRO have to personally conduct the verification of a positive drug test result?

Guidance: The DOT requirement that the MRO be a licensed physician with knowledge of substance abuse disorders (§ 40.33(b)(1)) indicates the importance that the DOT placed on this function. The regulatory requirement is that prior to making a final decision to verify a positive test result, the individual is given an opportunity to discuss the test result directly with the MRO. An appropriately medically trained staff person (e.g., a nurse with substance abuse training) may gather information from an employee about the employee's explanation for a positive result. In every case, however, the MRO must talk to the employee before making the decision to confirm a laboratory positive as a verified positive drug test result. No staff person may make this decision for the MRO.

Question 2: Does the DOT drug testing rule permit the use of a second and different MRO to whom the results of the split specimen can be sent by the second laboratory?

Guidance: There is no appropriate role for a second and different MRO to whom the results of the split specimen would be submitted. The DOT's interpretation is that this procedure is not permissible under the DOT rule.

The laboratory results of the split specimen are for the presence of the drug or drug metabolite and the rule text does not authorize a ''second'' verification process of the split results. Therefore, the use of a second MRO does not add to the overall verification process required by the rule. Additionally, if the split specimen fails to reconfirm or is not available for testing, it is the responsibility of the (original) MRO to cancel the test and provide notification of this cancellation to the appropriate parties. It would be inappropriate for the second MRO to cancel the test nor would the second MRO have the appropriate information to accomplish the cancellation notification.

Question 3: If the MRO determines that a donor has a legitimate prescription for Marinol, would this be reported as a negative result? What if in the MRO's opinion, the use of the prescribed medication may compromise safety?

Guidance: Section 40.33(a)(1) states in part, that ''* * * A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of the results.'' The DOT's interpretation has been that if the MRO can determine that the donor has a legitimate prescription, the positive result would be ''down graded'' to a negative. This would apply to any legitimately prescribed drug, including Marinol. If the MRO determines that the use of that particular prescription/substance may compromise safety in the performance of a transportation related safety sensitive function (whether or not the substance is prescribed for the appropriate condition), the MRO should discuss this with the donor's (prescribing) physician. The donor's physician may decide to prescribe an alternate substance that may not have adverse effects on the donor's performance of his/her duties.

Section 40.33(i) states in part, that ''(1) The MRO may disclose such [medical] information to the employer, a DOT agency * * * or a physician responsible for determining the medical qualification of the employee * * * if * * * (iii) * * * the information indicates that continued performance by the employee * * * could pose a significant safety risk. (2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph * * *''. If after talking to the prescribing physician, the MRO still determines that a safety risk exists, he/she may inform the employer, DOT, or the employer's physician of the existence of a medical condition that could preclude the donor from performing a safety sensitive function. However, the MRO must ensure that he/she informed the employee prior to the verification process that this (medical) information may be provided to a third party.

Question 4: Is there such a thing as an MRO management company or does the law specify that a single certified MRO review each lab result from tested employees and personally transmit the test results to the specific employer? Does the law require that the owner of an MRO management company be a physician? Do negative test results have to be handled by a physician MRO, or may the results be handled by the MRO management company administrators?

Guidance: While part 40 makes no mention of an ''MRO management company'' the regulations do address the role of the C/TPA. The rules do not permit the C/TPA to receive drug testing results directly from either the laboratory or from the MRO. The laboratory results are reported directly to the MRO, and the MRO results are reported directly to the employer.

Through interpretation of § 40.33(a), the DOT has permitted the administrative review to be conducted by *staff* persons working *under the direct supervision* of the MRO. While allowing this delegation of MRO responsibility, the DOT never intended nor can it condone a practice which allows for MROs to appoint outside ''agents'' to perform this review. The

MRO should have a direct supervisory relationship with the reviewer and not simply have access to the ''process'' of the administrative review. Conversely, a C/TPA cannot contract for the MRO to review only positive drug test results, leaving the review or processing of negatives to the C/TPA.

Question 5: May a C/TPA act as an agent of the MRO for the purpose of conducting administrative reviews of all negative urine drug test results and receive drug testing results directly from the laboratory?

Guidance: No. The DOT never intended nor can it condone a practice which allows MROs to appoint outside agents to conduct such reviews. Additionally, § 40.29(g) requires that *all* drug test results be transmitted by the laboratory directly to the MRO. Transmission to the MRO means to the MRO's place of business and not to a subsidiary or contractor for the MRO. There is also the requirement that, regardless of what forms/records a consortium or third party administrator maintains for an employer, notification of all positive results will be performed by the MRO and not through or by anyone else.

Question 6: What are the MRO's review requirements during the verification process when the MRO copy of the custody and control form is not available?

Guidance: The MRO may complete the verification process if the MRO's copy of the custody and control form is not available for review. The MRO needs to review a copy of the chain of custody which contains the employee's signature. A copy may be obtained from the employee, the collector, or the employer. These copies have the employee's signature.

The preamble to part 40 (Medical Officer Issues) published on December 1, 1989 requires the MRO not to declare a verified positive result until he or she receives the hard copy of the original chain of custody form from the laboratory. This is because, prior to determining that the test is a verified positive, the MRO verifies the identifying information and the facial completeness of the chain of custody (i.e., determines that, on the face of the document, all the sign-offs are in the right places).

Question 7: Does the MRO have to verify each drug when the laboratory reports a multiple positive drug test results for the same individual under the DOT drug and alcohol rule?

Guidance: Section 40.33(a) states ''Medical review officer shall review confirmed positive results.'' The DOT drug rule requires analysis of urine for five drugs. Multiple drug positive results for the same specimen (donor) require the MRO to verify each reported drug to determine if there is a medical explanation for each positive result. Additionally, the DOT drug and alcohol management information system requests information on *multiple* drug results (for each individual). The intent is to capture this information.

However, in the preemployment process, it would appear that with the employer's consent, the MRO may report a verified positive result for one drug out of several laboratory positive results (for one individual) without continuing to seek verification for the other drugs reported by the laboratory. The MRO may need to use his/her professional judgement to determine if verification of the other drugs may be accomplished expeditiously. Regardless of the number of drugs that are reported as verified for one individual, that individual cannot perform safety-sensitive work until he/she provides a urine specimen that is negative.

In the case where the MRO verifies and reports only one drug, the other drugs should *not* be reported to the employer if they have not been verified. The MRO may document these unverified positive results in his/her records as unverified and unreported results.

Question 8: Is a company obligated to pay for the processing of a split urine specimen when the primary specimen is positive? Does a company have to pay for testing the split specimen if it was a pre-employment test?

Guidance: The split sample procedure is a statutory requirement of the Omnibus Transportation Employee Testing Act of 1991 for employers in the aviation, highway, rail, and transit industries, as well as the DOT rules. Section 40.3 states, in part: ''Employee. An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this part ''employee'' includes an applicant for employment.'' And § 40.33(f) states, in part: ''If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provided the split specimen to another DHHS-certified laboratory for analysis.'' In other words, if the applicant or employee makes the request within this time period, the split specimen must be tested. This is true of all types of tests, including pre-employment.

The employer is responsible for ensuring that the test occurs, including taking responsibility for paying for it. The employer may arrange with the applicant or employee for reimbursement, but in *no* case does the refusal by the applicant or employee to contribute to the cost of the test excuse the employer from ensuring that the test takes place. A previous agreement negotiated between the employee and employer or a labor-management agreement that specifies payment arrangements, could dictate the ultimate payment source.

The split specimen testing process, initiated by the MRO's written request, should not be delayed while awaiting payment to come from the applicant or employee. If there is a dispute, the fall-back position would be for the employer to be billed (by either the primary laboratory for sending the split specimen, or the receiving laboratory for testing the split specimen) and then for the employer to settle the matter after-the-fact with the applicant or employee.

Question 9: When may the MRO notify an employer of a positive drug test result?

Guidance: The MRO may not notify the employer of a positive test until he/she has *verified* the test as positive. Verification requires that the MRO review the chain of custody documentation, contact the employee, review any documentation of a legitimate medical explanation for a positive test, and determine that the positive resulted from unauthorized use of a controlled substance. The MRO is not required to delay verification pending the outcome of the reanalysis or the split specimen. Only upon verification shall the MRO notify the employer of the positive result, and the employer shall then remove the employee from the safety-sensitive duties/position. Once having received notice of a verified positive result from the MRO, the employer shall not delay removal of the employee from safety-sensitive duties pending the outcome of the reanalysis or the split specimen.

Question 10: Must the MRO report to employers be in writing

Guidance: Part 40 does not require the MRO to provide written notification to employers of verified drug test results. The FHWA, however, does require MROs to forward a signed, written notification to the employer within three business days of the completion of the MRO's review for both positive and negative results. A legible photocopy of the fourth copy of the *Federal Drug Testing Custody and Control Form* required by part 40 appendix A may be used to make the signed, written notification to the employer for all test results (positive, negative, canceled, etc.), provided that the controlled

substance(s) verified as positive, and the MRO's signature, shall be legibly noted in the remarks section of step 8 of the form completed by the MRO.

Question 11: May an MRO use part 2 of drug testing custody and control form to report negative results?

Guidance: No. The MRO should not provide the employer with a copy of the custody and control form bearing the results from the laboratory. Often, positive results reported by the laboratory are determined by the MRO to be explained by authorized medical use of a substance, and thus are verified and reported negative. Employers are not permitted to have the laboratory information, only the MRO's determination.

Question 12: Please explain an MRO's review of negative results.

Guidance: The duties of the MRO with respect to reviewing negative urine drug test results are strictly administrative, but must include a review of the drug testing custody and control form prior to releasing the results to the employer. This is necessary to substantiate that the reported negative result is correctly identified with the donor and to ensure that the form is complete and sufficient on its face (§ 40.33(a) (1–2)). While the DOT, through interpretation, has permitted the administrative review to be conducted by a staff person working under the direct supervision of the MRO, the requirement to conduct the review in accordance with current regulations remains in effect.

Question 13: Please explain MRO verification of opiate positives.

Guidance: The MRO verification process of any positive laboratory report requires several specific actions. These include a review of the drug testing custody and control form for completeness and accuracy, notifying and providing the donor an opportunity to discuss the results, reviewing the donor's medical history and medical records, and investigating other biomedical factors that may account for the positive result.

The above actions are especially important when the MRO is confronted with an opiate positive, as the result may be caused by the use of a legally prescribed medication or an ingested substance, such as poppy seeds. Using the above steps as a guide, the MRO first ensures that the drug testing custody and control form is complete and accurate on its face. Next, the MRO notifies the donor of the positive test result and offers the individual an opportunity to discuss the results. If the donor expressly declines the opportunity to discuss the test results, or fails to contact the MRO within five days after being notified by a designated employer representative to do so, the MRO may verify the laboratory test result as a positive. This includes results that are positive for opiates.

If the donor accepts the opportunity to discuss the results with the MRO, the MRO must review any medical records provided by the donor to determine if the opiate positive resulted from a legally prescribed medication. If the donor is unable to produce medical evidence and admits to unauthorized use of an opiate, the MRO should verify the result as a positive. However, if the donor is unable to produce medical evidence, denies unauthorized use of an opiate, or denies using another individual's medication, the MRO *must determine that there is clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative before verifying the test result as positive.* Examples of clinical evidence include recent needle tracks or behavioral or psychological signs of acute opiate intoxication or withdrawal. If a laboratory confirms the presence of 6-acetylmorphine (6–AM) through a GC/MS test, no clinical evidence is necessary, since 6–AM is a direct deacetylated metabolite of heroin, detectable within minutes, and its presence proves the recent use of heroin. If 6–AM is not found, clinical evidence will be required to verify a positive opiate result whether or not the donor claims poppy seed ingestion as a defense for the positive result.

The verification process for an opiate positive result can be a very complex and very difficult task for the MRO and should be undertaken with a great deal of caution.

Question 14: Please clarify the MRO/lab relationship.

Guidance: Section 40.29(n)(6) states: ''The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO.'' Section 40.33(b)(2) further states: ''The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.'' Therefore, the rule prohibits an employer-employee or contract relationship between the laboratory and the MRO, and it is obvious that there must be a clear separation of functions between the MRO and the laboratory.

Question 15: In what situations may an MRO reopen a verification of a drug test?

Guidance: Section 40.33 specifically allows the reopening of an MRO's verification of a confirmed positive drug test in only two situations. When a donor provides documentation that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO, the MRO may conclude from the documentation that there is a legitimate explanation for the employee's failure to contact the MRO (see § 40.33(c)(6)). The second situation is if neither the employer nor the MRO is able to contact the employee and the MRO declares the test result to be positive, and the employee *subsequently* provides documentation that serious illness, injury, or other circumstances unavoidably prevented the employee from contacting the MRO in a timely manner, the MRO may conclude from the documentation that there is a legitimate explanation for the employee's failure to contact the MRO (see § 40.33(g)).

Section 40.35 Protection of Employee Records

Question 1: Please clarify release of alcohol and drug test results with or without written authorization.

Guidance: The rules governing release of employee test results (§§ 40.35 and 40.81) permit disclosure to persons other than the employee, employer, or decision-maker in a lawsuit or grievance action, only with the written authorization of the employee. The authorization must be an informed consent, in that the employee fully understands the intended use and disclosure of the test results. Each entity's request for test results would require a separate authorization and must be specific. Specific items including the purpose of the release, specific test(s) to be released, the party(ies) to whom these specific results will be released must be included.

Question 2: May employees be required to sign release forms for third-party disclosures?

Guidance: The intent of (§§ 40.29(g)(3), 40.35 and 40.37) is to ensure confidentiality of employee drug test results. Employees cannot be required to sign release or consent statements for third-party disclosure as part of the drug testing process. Information concerning the drug test may be released by the employer in

unemployment or workmen's compensation proceedings, or other situations in which the employee is seeking a benefit or challenges an action taken by the employer as a result of a drug test.

It should be noted, however, that employers are required to request written authorization from CMV drivers to obtain past verified positive drug test results, refusals to test, and alcohol concentrations of 0.04 or greater over the past 2 years of driving a CMV (§§ 382.405(f) and 382.413(a)).

Section 40.39 Use of DHHS-Certified Laboratories

Question 1: May additional testing be conducted on a DOT specimen reported by the laboratory as negative?

Guidance: Section 2.4(e)(3) of the Department of Health and Human Service's Mandatory Guidelines for Federal Workplace Drug Testing Programs states, ''Specimens that test negative on all initial immunoassay tests shall be reported as negative. No further testing of those negative specimens for drugs is permitted and the specimens shall be either discarded or pooled for use in the laboratory's internal quality control program.''

The DOT requires use of DHHS-certified laboratories to do all DOT-required testing. Therefore, the above DHHS requirement is a DOT requirement as well. When a DOT specimen is reported as negative by the laboratory, no additional testing of the specimen is permissible.

Question 2: Why use DHHS-certified laboratories?

Guidance: The DOT requires that all drug testing mandated under the provisions of its drug testing rules must be conducted in DHHS-certified laboratories. The DOT decision to use DHHS-certified laboratories for drug testing is mandated by statute (Omnibus Transportation Employee Testing Act of 1991). The DHHS standards for certification and the proficiency testing requirements comprise the most stringent laboratory accreditation program available in analytical forensic toxicology for urine drug testing. Additionally, the DHHS certification program provides for standardization of laboratory methodology and procedures, ensuring equal treatment of all specimens analyzed. Finally, the use of DHHS-certified laboratories provides a standard that has withstood the test of legal challenges in Federal drug testing.

Section 40.69 Inability To Provide an Adequate Amount of Breath

Question 1: If an employee is unable to provide an amount of breath sufficient to permit a valid breath test, but does not allege that such inability is due to a medical condition, what actions must follow?

Guidance: The rules prohibit a covered employee from refusing to submit to required alcohol tests. Post-accident, random, reasonable suspicion, or follow-up tests must be taken when those tests are required. Section 40.69 sets forth the procedures to be followed when an employee is unable to provide an adequate amount of breath for *any* reason. These procedures apply to the employee who claims a particular medical condition is creating the inability to provide breath; they also apply to the employee who claims to have no idea as to the cause of the inability, or to the employee who says nothing at all.

It is imperative that the employee understands that during the required follow-on medical evaluation, the physician will concentrate solely on finding a medical condition to explain the inability. Paragraphs (d)(2)(i) and (d)(2)(ii) of § 40.69 dictate that the *only* acceptable reason for an employee to be unable to provide an adequate amount of breath for testing is a medical condition. If a medical condition is not found, the employee will be deemed to have refused testing.

Section 40.81 Availability and Disclosure of Alcohol Testing Information About Individual Employees

Question 1: If there is one or more BAT working for a company, does the BAT supervisor have the right to review (have access to) the Breath Alcohol Testing Forms for purposes of supervisory control? Likewise, may this form be passed along by the BAT or the employer to billing personnel?

Guidance: The rule holds employers responsible for implementation of the *total* program. This includes confidentiality of information and maintenance of records (including BAT and MRO records). Individuals such as supervisors of BATs and billing personnel with a ''need to know'' are considered authorized company personnel and are permitted to have access to breath alcohol testing documentation. Access to information would be for a specific purpose and necessary for the employer's successful implementation of the program. This would include review of the forms for completion, obtaining specific billing data from the forms, filing the forms, etc. Individuals with access to these forms are under the same regulatory requirements for maintaining confidentiality of these records as are employers and BATs. Breath Alcohol Testing Forms should not be duplicated for purposes of supervision or billing as this would create additional ''data bases'' or files with potential problems of disclosure of confidential information. Access to these records by unauthorized personnel would be difficult to control. This does not preclude use of input forms filled out by the BAT or other personnel that would contain appropriate billing data and which could be maintained as backup documentation.

When the employer uses a C/TPA to act as the agent of the employer, then that C/TPA could have access to the Breath Alcohol Testing Form or the authority to obtain a copy of the form. Likewise, the employer's copy of the form may be submitted to the C/TPA by the employer or by the BAT when the employer has directed the BAT in writing to do so. In all cases of positive results at or above the .02 BAC level, the employer must be notified immediately, *and* prior to notification of the C/TPA. Positive results may *not* be sent from the BAT to the C/TPA and then submitted to the employer.

Section 40.93 The Screening Test Technician

Question 1: May an STT become trained to proficiency on an evidential breath tester (EBT) for the purposes of conducting screening tests on that device?

Guidance: No. Section 40.93 only authorizes the STT to operate an alcohol screening device (ASD); it does not authorize the STT to operate an EBT. This was by design. Likewise, the STT training manual does not address the use of an EBT by the STT. This is in contrast with the training manual for the BAT which concentrates solely on the EBT; in fact, an entire unit in the BAT training manual is devoted to ''EBT Methodology.'' Additionally, the proficiency requirements for the ASD, as contained in the STT manual, are different from the proficiency requirements for the EBT, as contained in the BAT manual.

When an EBT is used to conduct a DOT alcohol test, the operator must be a BAT. An STT is limited to conducting only the alcohol screening test, and the only instrument the STT may use is an ASD.

Special Topics—Requirements for Random Testing

Question 1: Please explain the random testing rates for alcohol and drugs.

Guidance: The DOT drug testing rules require employers initially to conduct

random drug testing at a rate equal to 50 percent of their covered employees. Thus, if an employer has 100 covered employees, the employer must administer 50 random drug tests. The number of random tests is determined by the covered employee population, while the number of employees randomly tested varies depending on the random selection process. It is possible that 50 random tests may be conducted on less than 50 employees, some employees being tested two or more times due to the random selection of donors. The highway industry may be allowed to reduce the annual rate to 25 percent in calendar year 1998 based on the highway industry's performance in calendar years 1995 and 1996. The rate may be lowered to 25 percent based on two years of data reported to FHWA indicating a positive rate of less than 1.0 percent use of drugs by CMV drivers. The rate may increase again, however, to 50 percent based on one year of data reported to FHWA indicating a positive rate equal to or greater than 1.0 percent use of drugs by CMV drivers.

The alcohol testing rules require employers initially conduct random testing at a rate equal to 25 percent of their covered employees. Thus, if an employer has 100 covered employees, the employer must administer 25 random drug tests. The number of random tests is determined by the covered employee population, while the number of employees randomly tested varies depending on the random selection process. It is possible that 25 random tests may be conducted on less than 25 employees, some employees being tested two or more times due to the random selection of donors. The highway industry may be allowed to reduce the annual rate to 10 percent in calendar year 1999 based on the highway industry's performance in calendar years 1996 and 1997. The rate may be lowered to 10 percent based on two years of data reported to FHWA indicating a violation rate of less than 0.5 percent use of alcohol by CMV drivers. The highway industry would be required to raise the annual rate to 50 percent in calendar year 1998 or later years based on the highway industry's performance in calendar year 1996 or later years. The rate may increase to 50 percent based on one year of data reported to FHWA indicating a violation rate of is equal to or greater than 1.0 percent use of alcohol by CMV drivers.

Question 2: Is use of a consortium to conduct random testing allowed?

Guidance: The FHWA requires individual owner-operators to be in a random testing pool of two or more persons. This, in effect, requires an individual owner-operator to be in a consortium for random testing purposes. The DOT allows and even advocates the use of a consortium to assist smaller companies in complying with the alcohol and drug testing regulations. While it is true that in a combined employer pool, some employers will have a higher percentage of their employees selected for testing than others in a given 12-month period, over time this will even out. Additionally, the DOT believes that the deterrent effect of random drug testing remains as powerful in a combined employers pool as it would be in a stand-alone single company pool. With this in mind, the DOT has determined that combining employer pools within a consortium meets the spirit and intent of the alcohol and drug testing regulations and is, therefore, permissible.

Question 3: May an employer combine DOT and non-DOT random pools?

Guidance: No. While it would seem to be advantageous for an employer to combine all employees into one random testing pool, this move could dilute the number of DOT-covered employees who would actually be tested. For example, in a pool that is comprised of 50 DOT-covered employees and 50 non-DOT-covered employees, and assuming a testing rate of 50 percent, it is possible that no DOT-covered employees would be tested (100 employees, 50 tests, all 50 tests conducted on non-DOT employees). The likelihood of this happening, albeit remote, is possible under a truly random scheme. On the other hand, keeping the above two classes of employees in separate pools *assures* that at least 25 of the tests conducted by the company will be conducted on DOT-covered employees. It is this assurance that ultimately mandates that DOT-covered employees remain in separate random pools.

Question 4: May an employer combine employees covered by different operating administration rules into a single pool for random testing?

Guidance: The DOT has determined that it is, indeed, permissible for an employer to combine covered employees from different operating administrations (e.g. Research and Special Programs Administration, Coast Guard, and FHWA), into a single selection pool for the purpose of conducting random drug testing under DOT authority. When exercising this option, however, the employer must ensure that the random testing rate is at least equal to the highest rate required by each of the operating administrations.

Question 5: Is it permissible to separate union and non-union employees, both covered by DOT, into stand-alone pools?

Guidance: The DOT has determined that it is permissible for an employer to separate union and non-union employees into separate pools for the purpose of random drug testing. If using this approach, the employer must ensure that employees from each pool are tested at equal rates. For example, if pool ''A'' consists of 50 non-union employees and pool ''B'' consists of 300 union employees, the employer must ensure, if testing is done at a 50 percent rate, that 25 tests are conducted annually on employees from pool ''A'' and that 150 tests are conducted annually on employees from pool ''B.''

Special Topics—Procedures for Handling and Processing a Split Specimen

Question: Describe the proper handling and processing of a split specimen.

Guidance: ''Where the employer has used the split sample method, and the laboratory observes that the split sample is untestable, inadequate, or unavailable for testing, the laboratory shall nevertheless test the primary specimen. The laboratory does not inform the MRO or the employer of the untestability, inadequacy, or unavailability of the split specimen until and unless the primary specimen is a verified positive test and the MRO has informed the laboratory that the employee has requested a test of the split specimen.'' (§ 40.29(b)(1)(ii))

''In situations where the employer uses the split sample collection method, the laboratory shall log in the split specimen, with the split specimen bottle seal remaining intact.'' (§ 40.29(b)(2))

''When directed in writing by the MRO to forward the split specimen to another DHHS-certified laboratory for analysis, the second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen.'' (§ 40.29(b)(3))

''If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the

reasons for it to the DOT, the employer, and the employee.'' (§ 40.33(f))

If the primary laboratory does not receive a split specimen with the primary, or the split specimen is leaking, or the split specimen's seal is broken, or has any other problem that would make it unavailable for testing, the primary laboratory must *still* process the primary specimen as if there were no problems with the split specimen. The laboratory should not bring any split specimen deficiency to the attention of the MRO at this time. (§ 40.29(b)(1)(ii))

The seal on the split specimen must remain intact—just as the split specimen was sealed at the collection site. (§ 40.29(b)(2))

The MRO will direct the primary laboratory to forward the split specimen to a second DHHS-certified laboratory. At the second DHHS-certified laboratory, the split specimen shall only be used to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. (§ 40.29(b)(3))

Only a request from the employee can authorize the MRO to initiate the forwarding of the split specimen to the second DHHS-certified laboratory for analysis. (§ 40.33(f))

PART 325—COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

Sections Interpreted

325.1

Section 325.1 Scope Of The Rules In This Part

Question 1: What noise emission requirements are applicable to auxiliary generators?

Guidance: Auxiliary generators which normally operate only when a CMV is stopped or moving at 5 mph or less are ''auxiliary equipment'' of the kind contemplated by EPA and are, therefore, exempt from the noise limits in Part 325. However, noise from generators that run while the CMV is moving at higher speeds would be measured as part of total vehicle noise.

Question 2: Do refrigeration units on tractor-trailer combinations fall within the exemption listed in part 325, subpart A of the FMCSRs?

Guidance: No.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Sections Interpreted

382.103 Applicability
382.105 Testing Procedures
382.107 Definitions
382.109 Preemption of State and Local Laws
382.113 Requirement for Notice
382.115 Starting Date for Testing Programs
382.205 On-Duty Use
382.213 Controlled Substances Use
382.301 Pre-employment Testing
382.303 Post-accident Testing
382.305 Random Testing
382.307 Reasonable Suspicion Testing
382.401 Retention of Records
382.403 Reporting of Results in a Management Information System
382.405 Access to Facilities and Records
382.413 Release of Alcohol and Controlled Substances Test Information by Previous Employers
382.501 Removal From Safety-Sensitive Functions
382.507 Penalties
382.601 Motor Carrier Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substances
382.603 Training for Supervisors
382.605 Referral, Evaluation, and Treatment

Subpart B—Prohibitions

Special Topics—Responsibility for Payment for Testing
Special Topics—Multiple Service Providers
Special Topics—Medical Examiners Acting as MRO
Special Topics—Biennial (Periodic) Testing Requirements

Section 382.103 Applicability

Question 1: Are intrastate drivers of CMVs, who are required to obtain CDLs, required to be alcohol and drug tested by their employer?

Guidance: Yes. The definition of commerce in 382.107 is taken from 49 U.S.C. § 31301 which encompasses interstate, intrastate and foreign commerce.

Question 2: Are students who will be trained to be motor vehicle operators subject to alcohol and drug testing? Are they required to obtain a CDL in order to operate training vehicles provided by the school?

Guidance: Yes. Section 382.107 includes the following definitions:

Employer means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a CMV or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

Driver means any person who operates a CMV.

Truck and bus driver training schools meet the definition of an employer because they own or lease CMVs and assign students to operate them at appropriate points in their training. Similarly, students who actually operate CMVs to complete their course work qualify as drivers.

The CDL regulations provide that ''no person shall operate'' a CMV before passing the written and driving tests required for that vehicle (49 CFR 383.23(a)(1)). Virtually all of the vehicles used for training purposes meet the definition of a CMV, and student drivers must therefore obtain a CDL.

Question 3: Are part 382 alcohol and drug testing requirements applicable to firefighters in a State which gives them the option of obtaining a CDL or a non-commercial class A or B license restricted to operating fire equipment only?

Guidance: No. The applicability of part 382 is coextensive with part 383—the general CDL requirements. Only those persons required to obtain a CDL under Federal law and who actually perform safety-sensitive duties, are required to be tested for drugs and alcohol.

The FHWA, exercising its waiver authority, granted the States the option of waiving firefighters from CDL requirements. A State which gives firefighters the choice of obtaining either a CDL or a non-commercial license has exercised the option not to require CDLs. Therefore, because a CDL is not required, by extension part 382 is not applicable.

A firefighter in the State would not be required under Federal law to be tested for drugs and alcohol regardless of the type of license which the employer required as a condition of employment or the driver actually obtained. It is the Federal requirement to obtain a CDL, nonexistent in the State, that entails drug and alcohol testing, not the fact of actually holding a CDL.

Question 4: An employer or State government agency requires CDLs for drivers of motor vehicles: (1) with a GVWR of 26,000 pounds or less; (2) with a GCWR of 26,000 pounds or less inclusive of a towed unit with a GVWR of 10,000 pounds or less; (3) designed to transport 15 or less passengers, including the driver; or (4) which transport HM, but *are not* required to be placarded under 49 CFR part 172, subpart F. Are such drivers required by part 382 to be tested for the use of alcohol or controlled substances?

Guidance: No. Part 382 requires or authorizes drug and alcohol testing only of those drivers required by part 383 to obtain a CDL. Since the vehicles described above do not meet the definition of a CMV in part 383, their drivers are not required by Federal regulations to have a CDL.

Question 5: Are Alaskan drivers with a CDL who operate CMVs and have been waived from certain CDL requirements subject to controlled substances and alcohol testing?

Guidance: Yes. Alaskan drivers with a CDL who operate CMVs are subject to controlled substances and alcohol

testing because they have licenses marked either ''commercial driver's license'' or ''CDL''. The waived drivers are only exempted from the knowledge and skills tests, and the photograph on license requirements.

Question 6: Do the FHWA's alcohol and controlled substances testing regulations apply to employers and drivers in U.S. territories or possessions such as Puerto Rico and Guam?

Guidance: No. The rule by definition applies only to employers and drivers domiciled in the 50 states and the District of Columbia.

Question 7: Which drivers are to be included in a alcohol and controlled substances testing program under the FHWA's rule?

Guidance: Any person who operates a CMV, as defined in § 382.107, in intrastate or interstate commerce and is subject to the CDL requirement of 49 CFR part 383.

Question 8: Is a foreign resident driver operating between the U.S. and a foreign country from a U.S. terminal for a U.S.-based employer subject to the FHWA alcohol and controlled substances testing regulations?

Guidance: Yes. A driver operating for a U.S.-based employer is subject to part 382.

Question 9: What alcohol and drug testing provisions apply to foreign drivers employed by foreign motor carriers?

Guidance: Foreign employers are subject to the alcohol and drug testing requirements in part 382 (see § 382.103). All provisions of the rules will be applicable while drivers are operating in the U.S. Foreign drivers may also be subject to State laws, such as probable cause testing by law enforcement officers.

Section 382.105 Testing Procedures

Question 1: What does a BAT do when a test involves an independent, self-employed owner-operator with a confirmed alcohol concentration of 0.02 or greater, to notify a company representative as required by § 40.65(i)?

Guidance: The independent, self-employed owner-operator will be notified by the BAT immediately and the owner-operator's certification in Step 4 notes that the self-employed owner-operator has been notified. No further notification is necessary. The BAT will provide copies 1 and 2 to the self-employed owner-operator directly.

Question 2: A driver does not have a photo identification card. Must an employer representative identify the driver in the presence of the BAT/urine specimen collector or may the employer representative identify the driver via a telephone conversation?

Guidance: Those subject to part 382 are subject first, generally, to part 383. Part 383 requires all States, with an exception in Alaska for a very small group of individuals, to provide a CDL document to the individual that includes, among other things: the full name, signature, and mailing address of the person to whom such license is issued; physical and other information to identify and describe the person including date of birth (month, day, and year), sex, and height; and, a color photograph of the person. Except in these rare Alaskan instances, the FHWA fully expects most employer's to require the driver to present the CDL document to the BAT or urine collector.

A driver subject to alcohol and drug testing should be able to provide the CDL document. In those rare instances that the CDL or other form of photo identification is not produced for verification, an employer representative must be contacted and must provide identification. The FHWA will allow employer representatives to identify drivers in any way that the employer believes will positively identify the driver.

Question 3: Will foreign drug testing laboratories need to be certified by the National Institute on Drug Abuse (NIDA)? Will they need to be certified by the Department of Health and Human Services (DHHS)?

Guidance: The NIDA, an agency of the DHHS, no longer administers the workplace drug testing laboratory certification program. This program is now administered by the DHHS' Substance Abuse and Mental Health Services Administration. All motor carriers are required to use DHHS-certified laboratories for analysis of alcohol and controlled substances tests as neither Mexico nor Canada has an equivalent laboratory certification program.

Question 4: Particularly in light of the coverage of Canadian and Mexican employees, how should MROs deal, in the verification process, with claims of the use of foreign prescriptions or over-the-counter medication?

Guidance: Possession or use of controlled substances are prohibited when operating a CMV under the FHWA regulations regardless of the source of the substance. A limited exception exists for a substance's use in accordance with instructions provided by a licensed medical practitioner who knows that the individual is a CMV driver who operates CMVs in a safety-sensitive job and has provided instructions to the CMV driver that the use of the substance will not affect the CMV driver's ability to safely operate a CMV (see §§ 382.213, 391.41(b)(12), and 392.4(c)). Individuals entering the United States must properly declare controlled substances with the U.S. Customs Service. 21 CFR 1311.27.

The FHWA expects MROs to properly investigate the facts concerning a CMV driver's claim that a positive controlled substance test result was caused by a prescription written by a knowledgeable, licensed medical practitioner or the use of an over-the-counter substance that was obtained in a foreign country without a prescription. This investigation should be documented in the MRO's files.

If the CMV driver lawfully obtained a substance in a foreign country without a prescription which is a controlled substance in the United States, the MRO must also investigate whether a knowledgeable, licensed medical practitioner provided instructions to the CMV driver that the use of the ''over-the-counter'' substance would not affect the driver's ability to safely operate a CMV.

Potential violations of § 392.4 must be investigated by the law enforcement officer at the time possession or use is discovered to determine whether the exception applies.

Sections 382.107 Definitions

Question 1: What is an owner-operator?

Guidance: The FHWA neither defines the term ''owner-operator'' nor uses it in regulation. The FHWA regulates ''employers'' and ''drivers.'' An owner-operator may act as both an employer and a driver at certain times, or as a driver for another employer at other times depending on contractual arrangements and operational structure.

Section 382.109 Preemption Of State And Local Laws

Question 1: An employer is required by State or local law, regulation, or order to bargain with unionized employees over discretionary elements of the DOT alcohol and drug testing regulations (e.g., selection of DHHS-approved laboratories or MROs). May the employer defer the 1995 or 1996 implementation dates for testing employees until the collective bargaining process has produced agreement on these discretionary elements, or must the employer implement testing as required by part 382?

Guidance: The FHWA provided large employers 45 weeks and small employers 97 weeks collectively to bargain the discretionary elements of

the part 382 testing program. An employer must implement alcohol and controlled substances testing in accordance with the schedule in § 382.115. If observance of the collective bargaining process would make it impossible for the employer to comply with these deadlines, § 382.109(a)(1) preempts the State or local bargaining requirement to the extent needed to meet the implementation date.

Section 382.113 Requirement For Notice

Question 1: Must a notice be given before each test or will a general notice given to drivers suffice?

Guidance: A driver must be notified before submitting to each test that it is required by part 382. This notification can be provided to the driver either verbally or in writing. In addition, the FHWA believes that the use of the DOT Breath Alcohol Testing Form, OMB No. 2105–0529, and the Drug Testing Custody and Control Form, 49 CFR part 40, appendix A, will support the verbal or written notice that the test is being conducted in accordance with Part 382.

Section 382.115 Starting Date For Testing Programs

Question 1: In a governmental entity structured into various subunits such as departments, divisions, and offices, how is the number of an employer's drivers determined for purposes of the implementation date of controlled substances and alcohol testing?

Guidance: Part 382 testing applies to governmental entities, including those of the Federal government, the States, and political subdivisions of the States. An employer is defined as any person that owns or leases CMVs, or assigns drivers to operate them. Therefore, any governmental entity, or a subunit of it that controls CMVs and the day-to-day operations of its drivers, may be considered the employer for purposes of part 382. For example, a city government divided into various departments, such as parks and public works, could consider the departments as separate employers if the CMV operations are separately controlled. The city also has the option of deeming the city as the employer of all of the drivers of the various departments.

Section 382.205 On-duty Use

Question 1: What is meant by the terms ''use alcohol'' or ''alcohol use?'' Is observation of use sufficient or is an alcohol test result required?

Guidance: The term ''alcohol use'' is defined in § 382.107. The employer is prohibited in § 382.205 from permitting a driver to drive when the employer has actual knowledge of the driver's use of alcohol, regardless of the level of alcohol in the driver's body. The form of knowledge is not specified. It may be obtained through observation or other method.

Section 382.213 Controlled Substances Use

Question 1: Must a physician specifically advise that substances in a prescription will not adversely affect the driver's ability to safely operate a CMV or may a pharmacist's advice or precautions printed on a container suffice for the advice?

Guidance: A physician must specifically advise the driver that the substances in a prescription will not adversely affect the driver's ability to safely operate a CMV.

Section 382.301 Pre-Employment Testing

Question 1: What is meant by the phrase, ''an employer who uses, but does not employ, a driver * * * ?'' Describe a situation to which the phrase would apply.

Guidance: This exception was contained in the original drug testing rules and was generally applied to ''trip-lease'' drivers involved in interstate commerce. A trip-lease driver is generally a driver employed by one motor carrier, but who is temporarily leased to another motor carrier for one or more trips generally for a time period less than 30 days. The phrase would also apply to volunteer organizations that use loaned drivers.

Question 2: Must school bus drivers be pre-employment tested after they return to work after summer vacation in each year in which they do not drive for 30 consecutive days?

Guidance: A school bus driver whom the employer expects to return to duty the next school year does not have to be pre-employment tested so long as the driver has remained in the random selection pool over the summer. There is deemed to be no break in employment if the driver is expected to return in the fall.

On the other hand, if the driver is taken out of all DOT random pools for more than 30 days, the exception to pre-employment drug testing in § 382.301 would be unavailable and a drug test would have to be administered after the summer vacation.

Question 3: Is a pre-employment controlled substances test required if a driver returns to a previous employer after his/her employment had been terminated?

Guidance: Yes. A controlled substances test must be administered any time employment has been terminated for more than 30 days and the exceptions under § 382.301(c) were not met.

Question 4: Must all drivers who do not work for an extended period of time (such as layoffs over the winter or summer months) be pre-employment drug tested each season when they return to work?

Guidance: If the driver is considered to be an employee of the company during the extended (layoff) period, a pre-employment test would not be required so long as the driver has been included in the company's random testing program during the layoff period. However, if the driver was not considered to be an employee of the company at any point during the layoff period, or was not covered by a program, or was not covered for more than 30 days, then a pre-employment test would be required.

Question 5: What must an employer do to avail itself of the exceptions to pre-employment testing listed under § 382.301(c)?

Guidance: An employer must meet all requirements in § 382.301(c) and (d), including maintaining all required documents. An employer must produce the required documents at the time of the Compliance Review for the exception to apply.

Question 6: May a CDL driving skills test examiner conduct a driving skills test administered in accordance with 49 CFR part 383 before a person subject to part 382 is tested for alcohol and controlled substances?

Guidance: Yes. A CDL driving skills test examiner, including a third party CDL driving skills test examiner, may administer a driving skills test to a person subject to part 382 without first testing him/her for alcohol and controlled substances. The intent of the CDL driving skills test is to assess a person's ability to operate a commercial motor vehicle during an official government test of their driving skills. However, this guidance does not allow an employer (including a truck or bus driver training school) to use a person as a current company, lease, or student driver prior to obtaining a verified negative test result. An employer must obtain a verified negative controlled substance test result prior to dispatching a driver on his/her first trip.

Section382.303 Post-Accident Testing

Question 1: Why does the FHWA allow post-accident tests done by Federal, State or local law enforcement agencies to substitute for a § 382.303 test even though the FHWA does not allow a Federal, State or local law

enforcement agency test to substitute for a pre-employment, random, reasonable suspicion, return-to-duty, or follow-up test? Will such substitutions be allowed in the future?

Guidance: A highway accident is generally investigated by a Federal, State, or local law enforcement agency that may determine that probable cause exists to conduct alcohol or controlled substances testing of a surviving driver. The FHWA believes that testing done by such agencies will be done to document an investigation for a charge of driving under the influence of a substance and should be allowed to substitute for a FHWA-required test. The FHWA expects this provision to be used rarely.

The FHWA is required by statute to provide certain protection for drivers who are tested for alcohol and controlled substances. The FHWA believes that law enforcement agencies investigating accidents will provide similar protection based on the local court's prior action in such types of testing.

The FHWA will not allow a similar approach for law enforcement agencies to conduct testing for the other types of testing. A law enforcement agency, however, may act as a consortium to provide any testing in accordance with parts 40 and 382.

Question 2: May an employer allow a driver, subject to post-accident controlled substances testing, to continue to drive pending receipt of the results of the controlled substances test?

Guidance: Yes. A driver may continue to drive, so long as no other restrictions are imposed by § 382.307 or by law enforcement officials.

Question 3: A commercial motor vehicle operator is involved in an accident in which an individual is injured but does not die from the injuries until a later date. The commercial motor vehicle driver does not receive a citation under State or local law for a moving traffic violation arising from the accident. How long after the accident is the employer required to attempt to have the driver subjected to post-accident testing?

Guidance: Each employer is required to test each surviving driver for alcohol and controlled substances as soon as practicable following an accident as required by § 382.303. However, if an alcohol test is not administered within 8 hours following the accident, or if a controlled substance test is not administered within 32 hours following the accident, the employer must cease attempts to administer that test. In both cases the employer must prepare and maintain a record stating the reason(s) the test(s) were not promptly administered.

If the fatality occurs following the accident and within the time limits for the required tests, the employer shall attempt to conduct the tests until the respective time limits are reached. The employer is not required to conduct any tests for cases in which the fatality occurs outside of the 8 and 32 hour time limits.

Question 4: What post-accident alcohol and drug testing requirements are there for U.S. employer's drivers involved in an accident occurring outside the U.S.?

Guidance: U.S. employers are responsible for ensuring that drivers who have an accident (as defined in § 390.5) in a foreign country are post-accident alcohol and drug tested in conformance with the requirements of 49 CFR parts 40 and 382. If the test(s) cannot be administered within the required 8 or 32 hours, the employer shall prepare and maintain a record stating the reasons the test(s) was not administered (see §§ 382.303 (b)(1) and (b)(4)).

Question 5: What post-accident alcohol and drug testing requirements are there for foreign drivers involved in accidents occurring outside the United States?

Guidance: Post-accident alcohol and drug testing is required for CMV accidents occurring within the U.S. and on segments of interstate movements into Canada between the U.S.-Canadian border and the first physical delivery location of a Canadian consignee. The FHWA further believes its regulations require testing for segments of interstate movements out of Canada between the last physical pick-up location of a Canadian consignor and the U.S.-Canadian border. The same would be true for movements between the U.S.-Mexican border and a point in Mexico.

For example, a motor carrier has two shipments on a CMV from a shipper in Chicago, Illinois. The first shipment will be delivered to Winnipeg, Manitoba and the second to Lloydminster, Saskatchewan. A driver is required to be post-accident tested for any CMV accident that meets the requirements to conduct 49 CFR 382.303 Post-accident testing, that occurs between Chicago, Illinois and Winnipeg, Manitoba (the first delivery point). The FHWA would not require a foreign motor carrier to conduct testing of foreign drivers for any accidents between Winnipeg and Lloydminster.

The FHWA *does not* believe it has authority over Canadian and Mexican motor carriers that operate within their own countries where the movement does not involve movements into or out of the United States. For example, the FHWA does not believe it has authority to require testing for transportation of freight from Prince George, British Colombia to Red Deer, Alberta that does not traverse the United States.

If the driver is not tested for alcohol and drugs as required by § 382.303 and the motor carrier operates in the U.S. during a four-month period of time after the event that triggered the requirement for such a test, the motor carrier will be in violation of part 382 and may be subject to penalties under § 382.507.

Section 382.305 Random Testing

Question 1: Is a driver who is on-duty, but has not been assigned a driving task, considered to be ready to perform a safety-sensitive function as defined in § 382.107 subjecting the driver to random alcohol testing?

Guidance: A driver must be about to perform, or immediately available to perform, a safety-sensitive function to be considered subject to random alcohol testing. A supervisor, mechanic, or clerk, etc., who is on call to perform safety-sensitive functions may be tested at any time they are on call, ready to be dispatched while on-duty.

Question 2: What are the employer's obligations, in terms of random testing, with regard to an employee who does not drive as part of the employee's usual job functions, but who holds a CDL and may be called upon at any time, on an occasional or emergency basis, to drive?

Guidance: Such an employee must be in a random testing pool at all times, like a full-time driver. A drug test must be administered each time the employee's name is selected from the pool.

Alcohol testing, however, may only be conducted just before, during, or just after the performance of safety-sensitive functions. A safety-sensitive function as defined in § 382.107 means any of those on-duty functions set forth in § 395.2 On-Duty time, paragraphs (1) through (7), (generally, driving and related activities). If the employee's name is selected, the employer must wait until the next time the employee is performing safety-sensitive functions, just before the employee is to perform a safety-sensitive function, or just after the employee has ceased performing such functions to administer the alcohol test. If a random selection period expires before the employee performs a safety-sensitive function, no alcohol test should be given, the employee's name should be returned to the pool, and the number of employees subsequently selected should be adjusted accordingly to achieve the required rate.

Question 3: How should a random testing program be structured to account for the schedules of school bus or other drivers employed on a seasonal basis?

Guidance: If no school bus drivers from an employer's random testing pool are used to perform safety sensitive functions during the summer, the employer could choose to make random selections only during the school year. If the employer nevertheless chooses to make selections in the summer, tests may only be administered when the drivers return to duty.

If some drivers continue to perform safety-sensitive functions during the summer, such as driving buses for summer school, an employer could not choose to forego all random selections each summer. Such a practice would compromise the random, unannounced nature of the random testing program. The employer would test all selected drivers actually driving in the summer. With regard to testing drivers not driving during the summer, the employer has two options. One, names of drivers selected who are on summer vacation may be returned to the pool and another selection made. Two, the selected names could be held by the employer and, if the drivers return to perform safety-sensitive functions before the next random selection, the test administered upon the drivers' return.

Finally, it should be noted that reductions in the number of drivers during summer vacations reduces the average number of driving positions over the course of the year, and thus the number of tests which must be administered to meet the minimum random testing rate.

Question 4: Are driver positions that are vacant for a testing cycle to be included in the determination of how many random tests must be conducted?

Guidance: No. The FHWA random testing program tests employed or utilized drivers, not positions that are vacant.

Question 5: May an employer use the results of another program in which a driver participates to satisfy random testing requirements if the driver is used by the employer only occasionally?

Guidance: The rules establish an employer-based testing program. Employers remain responsible at all times for ensuring compliance with all of the rules, including random testing, for all drivers which they use, regardless of any utilization of third parties to administer parts of the program. Therefore, to use another's program, an employer must make the other program, by contract, consortium agreement, or other arrangement, the employer's own program. This would entail, among other things, being held responsible for the other program's compliance, having records forwarded to the employer's principal place of business on 2 days notice, and being notified of and acting upon positive test results.

Question 6: Once an employee is randomly tested during a calendar year, is his/her name removed from the pool of names for the calendar year?

Guidance: No, the names of those tested earlier in the year must be returned to the pool for each new selection. Each driver must be subject to an equal chance of being tested during each selection process.

Question 7: Is it permissible to make random selections by terminals?

Guidance: Yes. If random selection is done based on locations or terminals, a two-stage selection process must be utilized. The first selection would be made by the locations and the second selection would be of those employees at the location(s) selected. The selections must ensure that each employee in the pool has an equal chance of being selected and tested, no matter where the employee is located.

Question 8: When a driver works for two or more employers, in whose random pool must the driver be included?

Guidance: The driver must be in the pool of each employer for which the driver works.

Question 9: After what period of time may an employer remove a casual driver from a random pool?

Guidance: An employer may remove a casual driver, who is not used by the employer, from its random pool when it no longer expects the driver to be used.

Question 10: If an employee is off work due to temporary lay-off, illness, injury or vacation, should that individual's name be removed from the random pool?

Guidance: No. The individual's name should not be removed from the random pool so long as there is a reasonable expectation of the employee's return.

Question 11: Is it necessary for an owner-operator, who is not leased to a motor carrier, to belong to a consortium for random testing purposes?

Guidance: Yes.

Question 12: If an employer joins a consortium, and the consortium is randomly testing at the appropriate rates, will these rates meet the requirements of the alcohol and controlled substances testing for the employer even though the required percent of the employer's drivers were not randomly tested?

Guidance: Yes.

Question 13: Is it permissible to combine the drivers from the subsidiaries of a parent employer into one pool, with the parent employer acting as a consortium?

Guidance: Yes.

Question 14: How should an employer compute the number of random tests to be given to ensure that the appropriate testing rate is achieved given the fluctuations in driver populations and the high turnover rate of drivers?

Guidance: An employer should take into account fluctuations by estimating the number of random tests needed to be performed over the course of the year. If the carrier's driver workforce is expected to be relatively constant (i.e., the total number of driver positions is approximately the same) then the number of tests to be performed in any given year could be determined by multiplying the average number of driver positions by the testing rate.

If there are large fluctuations in the number of driver positions throughout the year without any clear indication of the average number of driver positions, the employer should make a reasonable estimate of the number of positions. After making the estimate, the employer should then be able to determine the number of tests necessary.

Question 15: May an employer or consortium include non-DOT-covered employees in a random pool with DOT-covered employees?

Guidance: No.

Question 16: Canadians believe that their laws require employer actions be tied to the nature of the job and the associated safety risk. Canadian employers believe they will have to issue alcohol and drug testing policies that deal with *all* drivers in an identical manner, not just drivers that cross the border into the United States. If a motor carrier wanted to add cross border work to an intra-Canadian driver's duties, and the driver was otherwise qualified under the FHWA rules, may the pre-employment test be waived?

Guidance: The FHWA has long required, since the beginning of the drug testing program in 1988, that transferring from intrastate work into interstate work requires a ''pre-employment'' test regardless of what type of testing a State might have required under intrastate laws. This policy also applied to motor carriers that had a pre-employment testing program similar to the FHWA requirement. The FHWA believes it is reasonable to apply this same interpretation to the first time a Canadian or Mexican driver enters the United States.

This policy was delineated in the **Federal Register** of February 15, 1994 (59 FR 7302, at 7322). The FHWA believes motor carriers should separate drivers into intra-Canadian and inter-State groups for their policies and the random selection pools. If a driver in the intra-Canadian group (including the random selection pool) were to take on driving duties into the United States, the driver would be subject to a pre-employment test to take on this driving task. Although the circumstance is not actually a first employment with the motor carrier, such a test would be required because it would be the first time the driver would be subject to part 382.

Section 382.307 Reasonable Suspicion Testing

Question 1: May a reasonable suspicion alcohol test be based upon any information or observations of alcohol use or possession, other than a supervisor's actual knowledge?

Guidance: No. Information conveyed by third parties of a driver's alcohol use may not be the only determining factor used to conduct a reasonable suspicion test. A reasonable suspicion test may only be conducted when a trained supervisor has observed specific, contemporaneous, articulable appearance, speech, body odor, or behavior indicators of alcohol use.

Question 2: Why does § 382.307(b) allow an employer to use indicators of chronic and withdrawal effects of controlled substances in the observations to conduct a controlled substances reasonable suspicion test, but does not allow similar effects of alcohol use to be used for an alcohol reasonable suspicion test?

Guidance: The use of controlled substances by drivers is strictly prohibited. Because controlled substances remain present in the body for a relatively long period, withdrawal effects may indicate that the driver has used drugs in violation of the regulations, and therefore must be given a reasonable suspicion drug test.

Alcohol is generally a legal substance. Only its use or presence in sufficient concentrations while operating a CMV is a violation of FHWA regulation. Alcohol withdrawal effects, standing alone, do not, therefore, indicate that a driver has used alcohol in violation of the regulations, and would not constitute reasonable suspicion to believe so.

Question 3: A consignee, consignor, or other party is a motor carrier employer for purposes of 49 CFR parts 382 through 399. They have trained their supervisors in accordance with 49 CFR 382.603 to conduct reasonable suspicion training on their own drivers. A driver for another motor carrier employer delivers, picks up, or has some contact with the consignee's, consignor's, or other party's trained supervisor. This supervisor believes there is reasonable suspicion, based on their training, that the driver may have used a controlled substance or alcohol in violation of the regulations. May this trained consignee, consignor, or other party's supervisor order a reasonable suspicion test of a driver the supervisor does not supervise for the employing/using motor carrier employer?

Guidance: No, the trained supervisor may not order a reasonable suspicion test of a driver the supervisor does not supervise for the employing/using motor carrier employer. Motor carrier employers may not conduct reasonable suspicion testing based ''on reports of a third person who has made the observations, because of that person's possible credibility problems or lack of appropriate training.''

The trained supervisor for the consignee, consignor, or other party may, however, choose to do things not required by regulation, but encouraged by the FHWA. They may inform the driver that they believe the driver may have violated Federal, State, or local regulations and advise them not to perform additional safety-sensitive work. They may contact the employing/using motor carrier employer to alert them of their reasonable suspicion and request the employing/using motor carrier employer take appropriate action. In addition, they may contact the police to request appropriate action.

Question 4: Are the reasonable suspicion testing and training requirements of §§ 382.307 and 382.603 applicable to an owner-operator who is both an employer and the only employee?

Guidance: No. The requirements of §§ 382.307 and 382.603 are not applicable to owner-operators in non-supervisory positions. Section 382.307 requires employers to have a driver submit to an alcohol and/or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of part 382. Applying § 382.307, Reasonable Suspicion Testing, to an owner-operator who is an employer and the only employee contradicts both ''reason'' and ''suspicion'' implicit in the title and the purpose of § 382.307. A driver who has self-knowledge that he/she has violated the prohibitions of subpart B of part 382 is beyond mere suspicion. Furthermore, § 382.603 requires ''all persons designated to supervise drivers'' to receive training that will enable him/her to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. An owner-operator who does not hire or supervise other drivers is not in a supervisory position, nor are they subject to the testing requirements of § 382.307. Therefore, such an owner-operator would not be subject to the training requirements of § 382.603.

Section 382.401 Retention of Records

Question 1: Many small school districts are affiliated through service units which are, in essence, a coalition of individual districts. Can these school districts have one common confidant for purposes of receiving results and keeping records?

Guidance: Yes. Employers may use agents to maintain the records, as long as they are in a secure location with controlled access. The employer must also make all records available for inspection at the employer's principal place of business within two business days after a request has been made by an FHWA representative.

Section 382.403 Reporting of Results in a Management Information System

Question 1: The FHWA regulations are written on an annual calendar year basis. Will foreign motor carriers, using this system, work from July 1 to June 30, or is everything to be managed on a six-month basis for the first year and then fall into annual calendar years subsequently?

Guidance: All motor carriers must manage their programs and report results under § 382.403, if requested by FHWA, on a January 1 to December 31 basis. This means that foreign motor carriers will report July 1 to December 31 results the first applicable year.

Section 382.405 Access to Facilities and Records

Question 1: May employers who are subject to other Federal agencies' regulations, such as the Nuclear Regulatory Commission, Department of Energy, Department of Defense, etc., allow those agencies to view or have access to test records required to be prepared and maintained by parts 40 and/or 382?

Guidance: Federal agencies, other than those specifically provided for in § 382.405, may have access to an employer's driver test records maintained in accordance with parts 40 or 382 only when a specific, contemporaneous authorization for release of the test records is allowed by the driver.

Question 2: Must a motor carrier respond to a third-party administrator's request (as directed by the specific, written consent of the driver authorizing release of the information on behalf of an entity such as a motor carrier) to release driver information that is contained in records required to be maintained under § 382.401?

Guidance: Yes. However, the third-party administrator must comply with the conditions established concerning confidentiality, test results, and record keeping as stipulated in the ''Notice: Guidance on the Role of Consortia and Third-Party Administrators (C/TPA) in DOT Drug and Alcohol Testing Programs'' published on July 25, 1995, in Volume 60, No. 142, in the **Federal Register**. Motor carriers must comply completely with 49 CFR 382.413 and 382.405 as well as any applicable regulatory guidance. Please note that written consent must be obtained from the employee each time part 382 information is provided to a C/TPA, the consent must be specific to the individual or entity to whom information is being provided, and that blanket or non-specific consents to release information are not allowed.

Question 3: May employers allow unions or the National Labor Relations Board to view or have access to test records required to be prepared and maintained by parts 40 and/or 382, such as the list(s) of all employees actually tested?

Guidance: Unions and the National Labor Relations Board may have access to the list(s) of all employees in the random pool or the list(s) of all employees actually tested. The dates of births and SSNs must be removed from these lists prior to release. However, access to the employee's negative or positive test records maintained in accordance with parts 40 or 382 can be granted only when a specific, contemporaneous authorization for release of the test records is allowed by the driver.

Question 4: May an employer (motor carrier) disclose information required to be maintained under 49 CFR part 382 (pertaining to a driver) to the driver or the decision maker in a lawsuit, grievance, or other proceeding (including, but not limited to, worker's compensation, unemployment compensation) initiated by or on behalf of the driver, without the driver's written consent?

Guidance: Yes, a motor carrier has discretion without the driver's consent as provided by § 382.405(g), to disclose information to the driver or the decision maker in a lawsuit, grievance, or other proceeding (including, but not limited to, worker's compensation, unemployment compensation) initiated by or on behalf of the driver concerning prohibited conduct under 49 CFR part 382.

Also, an employer (motor carrier) may be required to provide the test result information pursuant to other Federal statutes or an order of a competent Federal jurisdiction, such as an administrative subpoena, as allowed by § 382.405(a) without the driver's written consent.

Question 5: What is meant by the term ''as required by law'' in relation to State or local laws for disclosure of public records relating to a driver's testing information and test results?

Guidance: The term ''as required by law'' in § 382.405(a) means Federal statutes or an order of a competent Federal jurisdiction, such as an administrative subpoena. The Omnibus Transportation Employee Testing Act of 1991, and the implementing regulations in part 382, require that test results and medical information be confidential to the maximum extent possible. (Pub. L. 102–143, Title V, sec. 5(a)(1), 105 Stat. 959, codified at 49 U.S.C. 31306). In addition, the Act preempts inconsistent State or local government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the regulations issued under the Act.

The FHWA believes the only State and local officials that may have access to the driver's records under § 382.405(d) and 49 U.S.C. 31306, without the driver's written consent, are State or local government officials that have regulatory authority over an employer's (motor carrier's) alcohol and drug testing programs for purposes of enforcement of part 382. Such State and local agencies conduct employer (motor carrier) compliance reviews under the FHWA's Motor Carrier Safety Assistance Program (MCSAP) on the FHWA's behalf in accordance with 49 CFR part 350.

Section 382.413 Release of Alcohol and Controlled Substances Test Information by Previous Employers

Question 1: What is to be done if a previous employer does not make the records available in spite of the employer's request along with the driver's written consent?

Guidance: Employers must make a reasonable, good faith effort to obtain the information. If a previous employer refuses, in violation of § 382.405, to release the information pursuant to the new employer's and driver's request, the new employer should note the attempt to obtain the information and place the note with the driver's other testing information (59 FR 7501, February 14, 1994).

Question 2: Within 14 days of first using a driver to perform safety-sensitive functions, an employer discovers that a driver had a positive controlled substances and/or 0.04 alcohol concentration test result within the previous two years. No records are discovered that the driver was evaluated by an SAP and has been released by an SAP for return to work. The employer removes the driver immediately from the performance of safety-sensitive duties. Is there a violation of the regulations?

Guidance: Based on the scenario as presented, only the driver is in violation of the rules.

Question 3: Must an employer investigate a driver's alcohol and drug testing background prior to January 1, 1995?

Guidance: No. The first implementation date of the part 382 testing programs was January 1, 1995. Section 382.413 requires subsequent employers to obtain information retained by previous employers that the previous employers generated under a part 382 testing program. Since no employer was allowed to conduct any type of alcohol or drug test under the authority of part 382 prior to January 1, 1995, no tests conducted prior to 1995 are required to be obtained under § 382.413. An employer may, however, under its own authority, request that a driver who was subject to part 391 drug testing provide prior testing information.

Question 4: Must a motor carrier respond to a third-party administrator's request (as directed by the specific, written consent of the driver authorizing release of the information on behalf of an entity such as a motor carrier) to release driver information that is contained in records required to be maintained under § 382.401?

Guidance: Yes. However, the third-party administrator must comply with the conditions established concerning confidentiality, test results, and record keeping as stipulated in the ''Notice: Guidance on the Role of Consortia and Third-Party Administrators (C/TPA) in DOT Drug and Alcohol Testing Programs'' published on July 25, 1995, in Volume 60, No. 142, in the **Federal Register**. Motor carriers must comply completely with §§ 382.413 and 382.405 as well as any applicable regulatory guidance. Please note that written consent must be obtained from the employee each time part 382 information is provided to a C/TPA, that the consent must be specific to the individual or entity to whom

information is being provided, and that blanket or non-specific consents to release information are not allowed.

Section 382.501 Removal From Safety-Sensitive Functions

Question 1: What work may the driver perform for an employer, if a driver violates the prohibitions in subpart B?

Guidance: A driver who has violated the prohibitions of subpart B may perform any duties for an employer that are not considered ''safety-sensitive functions.'' This may include handling of materials exclusively in a warehouse, regardless of whether the materials are considered hazardous as long as safety-sensitive functions are not performed. Safety-sensitive functions may not be performed until the individual has been evaluated by an SAP, complied with any recommended treatment, has been re-evaluated by an SAP, has been allowed by the SAP to return to work and has passed a return to duty test.

Section 382.507 Penalties

Question 1: What is the fine or penalty for employers who refuse or fail to provide Part 382 testing information to a subsequent employer?

Guidance: Title 49 U.S.C. 521(b)(2)(A) provides for civil penalties not to exceed $500 for each instance of refusing or failing to provide the information required by § 382.405. Criminal penalties may also be imposed under 49 U.S.C. 521(b)(6).

Section 382.601 Motor Carrier Obligation To Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substances

Question 1: If a driver refuses to sign a statement certifying that he or she has received a copy of the educational materials required in § 382.601 from their employer, will the *employee* be in violation of § 382.601? May the driver's supervisor sign the certificate of receipt indicating that the employee refused to sign?

Guidance: The *employer* is responsible for ensuring that each driver signs a statement certifying that he or she has received a copy of the materials required in § 382.601. The *employer* is required to maintain the original of the signed certificate and may provide a copy to the driver. The employer would be in violation if it uses a driver, who refuses to comply with § 382.601, to perform any safety sensitive function, because § 382.601 is a requirement placed on the employer. The employee would not be in violation if he or she drove without signing for the receipt of the policy. It is not permissible for the driver's supervisor to sign the certificate of receipt; however, it is advisable for the employer to note the attempt, the refusal, and the consequences of such action. Also, please note that the signing of the policy by the employee is in no way an acknowledgment that the policy itself complies with the regulations.

Question 2: Does § 382.601 require employers to provide educational materials and policies and procedures to drivers after the initial distribution of required educational materials?

Guidance: No.

Section 382.603 Training for Supervisors

Question 1: Does § 382.603 require employers to provide recurrent training to supervisory personnel?

Guidance: No.

Question 2: May an employer accept proof of supervisory training for a supervisor from another employer?

Guidance: Yes.

Section 382.605 Referral, Evaluation, and Treatment

Question 1: Must an SAP evaluation be conducted in person or may it be conducted telephonically?

Guidance: Both the initial and follow-up SAP evaluations are clinical processes that must be conducted face-to-face. Body language and appearance offer important physical cues vital to the evaluation process. Tremors, needle marks, dilated pupils, exaggerated movements, yellow eyes, glazed or bloodshot eyes, lack of eye contact, a physical slowdown or hyperactivity, appearance, posture, carriage, and ability to communicate in person are vital components that cannot be determined telephonically. In-person sessions carry with them the added advantage of the SAP's being able to provide immediate attention to individuals who may be a danger to themselves or others.

Question 2: Are employers required to provide intervention and treatment for drivers who have a substance abuse problem or only refer drivers to be evaluated by an SAP?

Guidance: An employer who wants to continue to use or hire a driver who has violated the prohibitions in subpart B in the past must ensure that a driver has complied with any SAP's recommended treatment prior to the driver returning to safety-sensitive functions. However, employers must only refer to an SAP drivers who have tested positive for controlled substances, tested 0.04 or greater alcohol concentration, or have violated other prohibitions in subpart B.

Question 3: Under the DOT rules, must an SAP be certified by the DOT in order to perform SAP functions?

Guidelines: The DOT does not certify, license, or approve individual SAPs. The SAP must be able to demonstrate to the employer qualifications necessary to meet the DOT rule requirements. The DOT rules define the SAP to be a licensed physician (medical doctor or doctor of osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, a national organization that imposes qualification standards for treatment of alcohol-related disorders, are included in the SAP definition.

Question 4: Are employers required to refer a discharged employee to an SAP?

Guidance: The rules require an employer to advise the employee, who engages in conduct prohibited under the DOT rules, of the available resources for evaluation and treatment including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. In the scenario where the employer discharges the employee, that employer would be considered to be in compliance with the rules if it provided the list to the employee and ensured that SAPs on the list were qualified. This employer has no further obligation (e.g., to facilitate referral to the SAP; ensure that the employee receives an SAP evaluation; pay for the evaluation; or seek to obtain, or maintain the SAP evaluation synopsis).

Question 5: How will the SAP evaluation process differ if the employee is discharged by the employer rather than retained following a rule violation?

Guidance: After engaging in prohibited conduct and prior to performing safety-sensitive duties in any DOT regulated industry, the employee must receive a SAP evaluation. And, when assistance with a problem is clinically indicated, the employee must receive that assistance and demonstrate successful compliance with the recommendation as evaluated through an SAP follow-up evaluation.

The SAP process has the potential to be more complicated when the employee is not retained by the employer. In such circumstances, the SAP will likely not have a connection with the employer for whom the employee worked nor have immediate

access to the exact nature of the rule violation. In addition, the SAP may have to hold the synopsis of evaluation and recommendation for assistance report until asked by the employee to forward that information to a new employer who wishes to return the individual to safety-sensitive duties. In some cases, the SAP may provide the evaluation, referral to a treatment professional, and the follow-up evaluation before the employee has received an offer of employment. This circumstance may require the SAP to hold all reports until asked by the individual to forward them to the new employer. If the new employer has a designated SAP, that SAP may conduct the follow-up evaluation despite the fact that the employee's SAP has already done so. In other words, a new employer may determine to its own satisfaction (e.g., by having the prospective employee receive a follow-up SAP evaluation utilizing the employer's designated SAP) that the prospective employee has demonstrated successful compliance with recommended treatment.

Question 6: Do community lectures and self-help groups qualify as education and/or treatment?

Guidance: Self-help groups and community lectures qualify as education but do not qualify as treatment. While self-help groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are crucial to many employees' recovery process, these efforts are not considered to be treatment programs in and of themselves. However, they can serve as vital adjuncts in support of treatment program efforts. AA and NA programs require a level of anonymity which makes reporting client progress and prognosis for recovery impossible. If the client provides permission, AA and NA sponsors can provide attendance status reports to the SAP. Therefore, if a client is referred to one of these groups or to community lectures as a result of the SAP evaluation, the employee's attendance, when it can be independently validated, can satisfy a SAP recommendation for education as well as a gauge for determining successful compliance with a treatment program when both education and treatment are recommended by the SAP's evaluation.

Question 7: Can an employee who has violated the rules return to safety-sensitive functions prior to receiving an SAP evaluation?

Guidance: The employee is prohibited from performing any DOT regulated safety-sensitive function until being evaluated by the SAP. An employer is prohibited from permitting the employee to engage in safety-sensitive duties until evaluated. If the evaluation reveals that assistance is needed, the employee must receive the assistance, be re-evaluated by the SAP (and determined to have demonstrated successful compliance with the recommendation), and pass a return-to-duty alcohol and/or drug test prior to performing safety-sensitive duties.

Question 8: Can an employer overrule an SAP treatment recommendation?

Guidance: No. If found to need assistance, the employee cannot return to safety-sensitive functions until an SAP's follow-up evaluation determines that the employee has demonstrated successful compliance with the recommended treatment. An employer who returns a worker to safety-sensitive duties when the employee has not complied with the SAP's recommendation is in violation of the DOT rule and is, therefore, subject to a penalty.

Question 9: Is an employer obligated to return an employee to safety-sensitive duty following the SAP's finding during the follow-up evaluation that the employee has demonstrated successful compliance with the treatment recommendation?

Guidance: Demonstrating successful compliance with prescribed treatment and testing negative on the return-to-duty alcohol test and/or drug test, are not guarantees of employment or of return to work in a safety-sensitive position; they are preconditions the employee must meet in order to be considered for hiring or reinstatement to safety-sensitive duties by an employer.

Question 10: Can an employee receive the follow-up from an SAP who did not conduct the initial SAP evaluation?

Guidance: Although it is preferable for the same SAP to conduct both evaluations, this will not be realistic in some situations. For instance, the initial SAP may no longer be in the area, still under contract to the employer, or still hired by the employer to conduct the service. Additionally, the employee may have moved from the area to a new location. In all cases, the employer responsibility is to ensure that both the initial SAP and the follow-up SAP are qualified according to the DOT rules.

Question 11: Who is responsible for reimbursing the SAP for services rendered? Who is responsible for paying for follow-up testing recommended by the SAP?

Guidance: The DOT rules do not affix responsibility for payment for SAP services upon any single party. The DOT has left discussions regarding payment to employer policies and to labor-management agreements. Therefore, in some instances, this issue has become part of labor-management negotiations.

Some employers have hired or contracted staff for the purpose of providing SAP services. For some employees, especially those who have been released following a violation, payment for SAP services will become their responsibility. In any case, the SAP should be suitable to the employer who chooses to return the employee to safety-sensitive functions. Employer policies should address this payment issue.

Regarding follow-up testing recommended by the SAP, when an employer decides to return the employee to safety-sensitive duty, the employer is essentially determining that the costs associated with hiring and training a new employee exceeds the costs associated with conducting follow-up testing of the returning employee. In any case, whether the employer pays or the employee pays, if the employee returns to performance of safety-sensitive functions, the employer must ensure that follow-up testing occurs as required. The employer will be held accountable if the follow-up testing plan is not followed.

Question 12: Can the SAP direct that an employee be tested for both alcohol and drugs for the return-to-duty test and during the follow-up testing program?

Guidance: If the SAP determines that an employee referred for alcohol misuse also uses drugs, or that an employee referred for drugs use also misuses alcohol, the SAP can require that the individual be tested for both substances. The SAP's decision to test for both can be based upon information gathered during the initial evaluation, the SAP's consultation contacts with the treatment program, and/or the information presented during the follow-up evaluation.

Question 13: Can random testing be substituted for required follow-up testing?

Guidance: Follow-up testing is directly related to a rule violation and subsequent return to safety-sensitive duty. Random tests are independent of rule violations. Therefore, the two test types are to be separated—one cannot be substituted for the other or be conducted in lieu of the other. Follow-up testing should be unpredictable, unannounced, and conducted not less than six times throughout the first 12 months after the employee returns to safety-sensitive functions. Follow-up testing can last up to 60 months. An employee subject to follow-up testing

will continue to be subject to an employer's random testing program.

Question 14: If a company has several employees in follow-up testing, can those employees be placed into a follow-up random testing pool and selected for follow-up testing on a random basis?

Guidance: Follow-up testing is not to be conducted in a random way. An employee's follow-up testing program is to be individualized and designed to ensure that the employee is tested the appropriate number of times as directed by the SAP. Random testing is neither individualized nor can it ensure that the employee receives the requisite number of tests.

Question 15: What actions are to occur if an employee tests positive while in the follow-up testing program?

Guidance: Employees testing positive while in follow-up testing are subject to the same specific DOT operating administration rules as if they tested positive on the initial test. In addition, the employees are subject to employer policies related to second violations of DOT rules.

Question 16: Can an SAP recommend that six follow-up tests be conducted in less than six months and then be suspended after all six are conducted?

Guidance: Follow-up testing must be conducted a minimum of six times during the first twelve months following the employee's return to safety-sensitive functions. The intent of this requirement is that testing be spread throughout the 12 month period and not be grouped into a shorter interval. When the SAP believes that the employee needs to be tested more frequently during the first months after returning to duty, the SAP may recommend more than the minimum six tests or can direct the employer to conduct more of the six tests during the first months rather than toward the latter months of the year.

Question 17: Can you clarify the DOT's intent with respect to a SAP's determination that an individual needs education?

Guidance: A SAP's decision that an individual needs an education program constitutes a clinically based determination that the individual requires assistance in resolving problems with alcohol misuse and controlled substances use. Therefore, the SAP is prohibited from referring the individual to her or his own practice for this recommended education unless exempted by DOT rules.

Question 18: In rare circumstances, it is necessary to refer an individual immediately for inpatient substance abuse services. May the SAP provide direct treatment services or refer the individual to services provided by a treatment facility with which he or she is affiliated, or must the inpatient provider refer the individual to another provider?

Guidance: SAPs are prohibited from referring an employee to themselves or to any program with which they are financially connected. SAP referrals to treatment programs must not give the impression of a conflict of interest. However, a SAP is not prohibited from referring an employee for assistance through a public agency; the employer or person under contract to provide treatment on behalf of the employer; the sole source of therapeutically appropriate treatment under the employee's health insurance program; or the sole source of therapeutically appropriate reasonably accessible to the employee.

Question 19: What arrangement for SAP services would be acceptable in geographical areas where no qualified SAP is readily available?

Guidance: The driver must be given the names, addresses, and phone numbers of the nearest SAPs. Because evaluation by a qualified SAP rarely takes more than one diagnostic session, the requirement for an in-person evaluation is not unreasonable, even if it must be conducted some distance from the employee's home.

Question 20: May an employee who tests positive be retained in a non-driving capacity?

Guidance: Yes. Before an employee returns to performing safety-sensitive functions, the requirements of § 382.605 must be met.

Question 21: Are foreign motor carriers required to have an employee assistance program?

Guidance: No. The employee assistance program was an element of the original FHWA drug testing program under 49 CFR part 391, which has been superseded by 49 CFR part 382. All motor carriers under part 382 alcohol and drug testing regulations must refer drivers, who operate in the U.S. and violate the FHWA's alcohol and drug testing regulations, to a substance abuse professional.

Subpart B—Prohibitions

Question 1: Does the term, ''actual knowledge,'' used in the various prohibitions in subpart B of part 382, require direct observation by a supervisor or is it more general?

Guidance: The form of actual knowledge is not specified, but may result from the employer's direct observation of the employee, the driver's previous employer(s), the employee's admission of alcohol use, or other occurrence. (59 FR 7320, February 15, 1994)

Special Topics—Responsibility for Payment for Testing

Question 1: Who is responsible for paying for any testing under the alcohol and drug testing program, the employer or the driver?

Guidance: Part 382 is silent as to the responsibility for paying for testing required under the rule. The employer remains responsible at all times for ensuring compliance with the rule, regardless of who pays for testing.

Special Topics—Multiple Service Providers

Question 1: May an employer use more than one MRO, BAT, or SAP?

Guidance: Yes.

Special Topics—Medical Examiners Acting as MRO

Question 1: A medical examiner conducts a physical examination of a driver (§ 391.43) and also acts as the MRO for the driver's pre-employment controlled substances test. Though the driver is otherwise physically qualified, the medical examiner declines to issue a medical examiner's certificate because the driver tested positive for controlled substances. What should the medical examiner do when the same driver, under the aegis of a different employer, returns a short period later, is otherwise physically qualified, and tests negative for controlled substances? What, if anything, may the medical examiner reveal to the second employer if he/she declines to issue a certificate to the driver?

Guidance: The driver may be physically unqualified under § 391.41(b)(12) if the medical examiner determines, based on other evidence besides the drug test, including, but not limited to knowledge of the prior positive test result, that the driver continues to use prohibited drugs (§ 391.43 *Medical examination; certificate of physical examination*). If the medical examiner so determines, a medical examiner's certificate may not be issued. If the medical examiner determines that the driver does not use prohibited drugs, a medical examiner's certificate may be issued.

The FHWA does not regulate communications between a medical examiner and employer, other than requiring notification by the MRO to the employer of controlled substances test results under Part 382 [see § 382.407(a)]. Though medical examiners must retain the physical examination form, employers are not required to do so. Many employers choose, however, to

contract with medical examiners to provide copies of the ''long form'' to the employers. The FMCSRs leave it solely a matter between the medical examiner and the employer whether the medical examiner merely declines to issue a medical examiner's certificate or also makes available to the employer the long form, which may include notes on alcohol and controlled substances use.

Special Topics—Biennial (Periodic) Testing Requirements

Question 1: May an employer perform testing beyond that required by the DOT?

Guidance: An employer may perform any testing provided it is consistent with applicable law and agreements, and is not represented as a DOT test.

Question 2: Does part 382 require a CMV driver to carry proof of compliance with part 382 and part 40?

Guidance: No. The drug and alcohol testing is employer-based and proof of compliance must be maintained by the employer. The only certificate that is required to be in the driver's possession while operating a CMV is the medical examiner's certificate required in § 391.41(a) and, if applicable, a waiver of certain physical defects issued under § 391.49.

Part 383—Commercial Driver's License Standards; Requirements and Penalties

Sections Interpreted

383.3 Applicability
383.5 Definitions
383.21 Number of Drivers' Licenses
383.23 Commercial Driver's License
383.31 Notification of Convictions for Driver Violations
383.33 Notification of Driver's License Suspensions
383.37 Employer Responsibilities
383.51 Driver Disqualifications —General Questions—
383.51 Driver Disqualifications —Alcohol Questions—
383.71 Driver Application Procedures
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383.75 Third Party Testing
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383.91 Vehicle Groups
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383.131 Test Procedures
383.133 Testing Methods
383.153 Information on the Document and Application
Special Topics—Motor Coaches and CDL
Special Topics—State Reciprocity

Section 383.3 Applicability

Question 1: Are school and church bus drivers required to obtain a CDL?

Guidance: Yes, if they drive vehicles designed to transport 16 or more people.

Question 2: Do mechanics, shop help, and other occasional drivers need a CDL if they are operating a CMV or if they only test drive a vehicle?

Guidance: Yes, if the vehicle is operated or test-driven on a public highway.

Question 3: Does part 383 apply to drivers of recreational vehicles?

Guidance: No, if the vehicle is used strictly for non-business purposes.

Question 4: Does part 383 apply to drivers of vehicles used in ''van pools''?

Guidance: Yes, if the vehicle is designed to transport 16 or more people.

Question 5: May a person operate a CMV wholly on private property, not open to public travel, without a CDL?

Guidance: Yes.

Question 6: Does off-road motorized construction equipment meet the definitions of ''motor vehicle'' and ''commercial motor vehicle'' as used in §§ 383.5 and 390.5?

Guidance: No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question 7: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

Question 8: Do operators of motorized cranes and vehicles used to pump cement at construction sites have to meet the testing and licensing requirements of the CDL program?

Guidance: Yes, because such vehicles are designed to be operated on the public highways and therefore do not qualify as off-road construction equipment. The fact that these vehicles are only driven for limited distances, at less than normal highway speeds and/or incidental to their primary function, does not exempt the operators from the CDL requirements.

Question 9: May a State require persons operating recreational vehicles or other CMVs used by family members for non-business purposes to have a CDL?

Guidance: Yes. States may extend the CDL requirements to recreational vehicles.

Question 10: Do drivers of either a tractor trailer or straight truck that is converted into a mobile office need a CDL?

Guidance: Yes, if the vehicle meets the definition of a CMV.

Question 11: Do State motor vehicle inspectors who drive trucks and motorcoaches on an infrequent basis and for short distances as part of their job have to obtain a CDL?

Guidance: Yes.

Question 12: Are State, county and municipal workers operating CMVs required to obtain CDLs?

Guidance: Yes, unless they are waived by the State under the firefighting and emergency equipment exemption in § 383.3(d).

Question 13: Do the regulations require that a person driving an empty school bus from the manufacturer to the local distributor obtain a CDL?

Guidance: Yes. Any driver of a bus that is designed to transport 16 or more persons, or that has a GVWR of 26,001 pounds or more, is required to obtain a CDL in the applicable class with a passenger endorsement.

Question 14: Are employees of any governmental agency who drive emergency response vehicles that transport HM in quantities requiring placarding subject to the CDL regulations?

Guidance: No, as long as the vehicle does not meet the weight/configuration thresholds for Groups A or B (in § 383.91). However, under the HMTUSA of 1990, when a Federal, State or local government agency ''offers HM for transportation in commerce or transports HM in furtherance of a commercial enterprise,'' its vehicles are subject to the placarding requirements of part 172, subpart F. Vehicles that are controlled and operated by government agencies in the conduct of governmental functions normally are not subject to placarding, since governmental activities usually are not commercial enterprises. Based on the above, local police emergency responders driving a vehicle having a gross vehicle or combination weight rating under 26,001 pounds do not need a CDL, according to

the Federal minimum standards, when transporting HM as a function of their agency. The drivers should check with their State licensing agency to determine what class of license the State may require to operate the vehicles.

Question 15: Are public transit employees known as ''hostlers,'' who maintain and park transit buses on transit system property, subject to CDL requirements?

Guidance: No, unless operating on public roads.

Question 16: Are non-military amphibious landing craft that are usually used in water but occasionally used on a public highway CMVs?

Guidance: Yes, if they are designed to transport 16 or more people.

Question 17: Are students who will be trained to be motor vehicle operators subject to alcohol and drug testing? Are they required to obtain a CDL in order to operate training vehicles provided by the school?

Guidance: Yes. Section 382.107 includes the following definitions:

Employer means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a CMV or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers and representatives.

Driver means any person who operates a CMV. * * *

Truck and bus driver training schools meet the definition of an employer because they own or lease CMVs and assign students to operate them at appropriate points in their training. Similarly, students who actually operate CMVs to complete their course work qualify as drivers.

The CDL regulations provide that ''no person shall operate'' a CMV before passing the written and driving tests required for that vehicle (§ 383.23(a)(1)). Virtually all of the vehicles used for training purposes meet the definition of a CMV, and student drivers must therefore obtain a CDL.

Question 18: May States exempt motor carriers which operate wholly in intrastate commerce from the Federal HMRs, thus exempting from the CDL requirement the driver of an unplacarded vehicle with a GVWR of less than 26,001 pounds?

Guidance: The HMRs apply to motor carriers in intrastate commerce only if they transport hazardous wastes, hazardous substances, flammable cryogenic liquids in portable tanks and cargo tanks, and marine pollutants (as those terms are defined in the HMRs) (see 49 CFR 171.1(a)(3)). Such carriers transporting any other cargo are not required to use HM placards, even if the cargo qualifies as hazardous under the Federal HMRs. Unless the vehicles used by these carriers had GVWRs of 26,001 pounds or more, they would not meet either the placarding or the GVWR test in the jurisdictional definition of a CMV (§ 383.5), and the driver would be exempt from the CDL requirements.

However, if the State has adopted the HMRs, or the placarding requirements of 49 CFR part 172, as regulations applicable to intrastate commerce, then the drivers of all vehicles required to use placards must also have CDLs.

If the State promulgates its own rules for the regulation of HM in intrastate commerce, instead of adopting the HMRs, and those rules are approved by the FHWA under 49 CFR 355.21(c)(3) and paragraph 3(d) of the Tolerance Guidelines (49 CFR part 350, appendix C), the drivers of vehicles with GVWRs of less than 26,001 pounds transporting such materials in intrastate commerce are required to obtain CDLs only if State law requires the use of placards.

Question 19: Must a civilian operator of a CMV, as defined in § 383.5, who operates wholly within a military facility open to public travel, have a CDL?

Guidance: Yes. The CDL requirement applies to every person who operates a CMV in interstate, foreign or intrastate commerce. Driving a CMV on a road, street or way which is open to public travel, even though privately-owned or subject to military control, is *prima facie* evidence of operation in commerce.

Question 20: Does the FHWA include the Space Cargo Transportation System (SCTS) off-road motorized military equipment under the definitions of ''motor vehicle'' and ''commercial motor vehicle'' as used in § 383.5?

Guidance: No. Although the SCTS has vehicular aspects (it is mechanically propelled on wheels), the SCTS is obviously incompatible with highway traffic and is found only at locations adjacent to military bases in California and Florida, and is operated by skilled technicians. The SCTS is moved to and from its point of manufacture to its launch site by ''driving'' the ''vehicles'' short distances on public roads at speeds of five MPH or less. This is only incidental to their primary functions; the SCTS is not designed to operate in traffic; and its mechanical manipulation often requires a different set of knowledge and skills. In most instances, the SCTS has to be specially marked, escorted, and attended by numerous observers.

Question 21: Are police officers who operate buses and vans which are designed to carry 16 or more persons and are used to transport police officers during demonstrations and other crowd control activities required to obtain a CDL?

Guidance: Yes. The CMVSA applies to anyone who operates a CMV, including employees of Federal, State and local governments. Crowd control activities do not meet the conditions for a waiver of operators of firefighting and other emergency vehicles in § 383.3(d).

Question 22: May fuel be considered ''farm supplies'' as used in § 383.3(d)(1)?

Guidance: Yes. The decision to grant the waiver is left to each individual State.

Question 23: Is the transportation of seed-cotton modules from the cotton field to the gin by a module transport vehicle considered a form of custom harvesting activity that may be included under the FRSI waiver (§ 383.3(f))?

Guidance: Yes. The transportation of seed-cotton modules from field to gin may, at the State's discretion, be considered as custom harvesting and therefore eligible for the FRSI waiver. However, cotton ginning operations as an industry and, specifically the transport of cotton from the gin, are not eligible activities under the FRSI waiver because these activities are not considered appropriate elements of custom harvesting.

Question 24: Does the amendment of the CMVSA by the Motor Carrier Act of 1991 exempt all custom harvesting operations from the CDL requirements or only the operation of combines?

Guidance: Section 4010 of the Motor Carrier Act of 1991 (Title IV of Pub. L. 102–240, 105 Stat 1914, 2156, December 18, 1991) modifies the definition of a ''motor vehicle'' in 49 U.S.C. 31301(11) by excluding ''custom harvesting farm machinery'' from the definition. The conference report clarifies the intent of the exclusion by stating: ''The substitute [provision] removes custom harvesting farm machinery from the Act. Operators of such machinery are not covered by the Commercial Motor Vehicle Safety Act of 1986. A State, however, may still impose a requirement for a commercial driver's license if it so desires. The change does not apply to vehicles used to transport this type of machinery.'' (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 449 (1991)).

Therefore, the intent of Congress was only to exempt operators of combines and other equipment used to cut the grain and not the operators of trucks, tractors, trailers, semitrailers or any other CMV.

Question 25: May a State (1) require an applicant for a CDL farmer waiver

(§ 383.3(d)) to take HM training as a condition for being granted a waiver and (2) reduce the 150-mile provision in the waiver to 50 miles if the driver is transporting HM?

Guidance: Yes. The Federal farm waiver is permissive, not mandatory.

Question 26: Do active duty military personnel, not wearing military uniforms, qualify for a waiver from the CDL requirements if the CMVs are rental trucks or leased buses from the General Services Administration?

Guidance: Yes. The drivers in question do not need to be in military uniforms to qualify for the waivers as long as they are on active duty. In regard to the vehicles, they may be owned or operated by the Department of Defense.

Question 27: Are custom harvesters who harvest trees for tree farmers eligible to be considered ''custom harvesters'' for purposes of the FRSI waiver from selected CDL requirements?

Guidance: If the State considers a firm that harvests trees for tree farmers to be a custom harvesting operation, then its employees could qualify for the FRSI-restricted CDLs, subject to the stringent conditions and limitations of the waiver provisions in § 383.3(f).

Question 28: May a farmer who meets all of the conditions for a farm waiver be waived from the CDL requirements when transporting another farmer's products absent any written contract?

Guidance: If a farmer is transporting another farmer's products and being paid for doing so, he or she is acting as a contract carrier and does not meet the conditions for a farm waiver. The existence of a contract, written or verbal, is not relevant to the CDL waiver provisions.

Question 29: May a State exempt commercial motor vehicle drivers employed by a partnership, corporation or an association engaged in farming from the CDL requirements under the farmer waiver (49 CFR 383.3(d)) or is the waiver only available to drivers employed by a family-owned farm?

Guidance: The purpose of the farmer exemption was to give relief to family farms (53 FR 37313, September 26, 1988). The conditions for the waiver were established to ensure that the waiver focused on this type of farm operation. However, ''farmer'' is defined in § 390.5 as ''any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which (a) [a]re owned by that person; or (b) [a]re under the direct control of that person.'' Since farming partnerships, corporations and associations are legal ''persons,'' States may exempt drivers working for these organizations from the CDL requirements, provided they can meet the strict limits imposed by the waiver conditions.

Question 30: May a State exempt commercial motor vehicle drivers employed by farm cooperatives from the commercial driver's license (CDL) requirements under the farmer waiver (§ 383(d))?

Guidance: No. The waiver covers only operators of farm vehicles which are controlled and operated by ''farmers'' as defined in § 390.5. The waiver does not extend to ancillary businesses, like cooperatives, that provide farm-related services to members. As stated in the waiver notice (53 FR 37313, September 26, 1988), ''[t]he waiver would not be available to operators of farm vehicles who operate over long distances, operate to further a commercial enterprise, or operate under contract or for-hire for farm cooperatives or other farm groups. Such operators drive for a living and do not drive only incidentally to farming.''

Question 31: Is a person who grows sod as a business considered a farmer and eligible for the farmer waiver?

Guidance: Yes, a sod farmer is eligible for the farmer waiver provided the State of licensure recognizes the growing of sod to be a farming activity.

Section 383.5 Definitions

Question 1: a. Does ''designed to transport'' as used in the definition of a CMV in § 383.5 mean original design or current design when a number of seats are removed?

b. If all of the seats except the driver's seat are removed from a vehicle originally designed to transport only passengers to convert it to a cargo-carrying vehicle, does this vehicle meet the definition of a CMV in § 383.5?

Guidance: a. ''Designed to transport'' means the original design. Removal of seats does not change the design capacity of the CMV.

b. No, unless this modified vehicle has a GVWR over 26,000 pounds or is used to transport placarded HM.

Question 2: Are rubberized collapsible containers or ''bladder bags'' attached to a trailer considered a tank vehicle, thus requiring operators to obtain a CDL with a tank vehicle endorsement?

Guidance: Yes.

Question 3: If a vehicle's GVWR plate and/or VIN number are missing but its actual gross weight is 26,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the Part 383?

Guidance: Yes. The only apparent reason to remove the manufacturer's GVWR plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of part 383, which has a GVWR threshold of 26,001 pounds. In order to frustrate willful evasion of safety regulations, an officer may therefore presume that a vehicle which does not have a manufacturer's GVWR plate and/or does not have a VIN number has a GVWR of 26,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 26,001 pounds or more; and (2) It has an actual gross weight of 26,001 pounds or more.

A motor carrier or driver may rebut the presumption by providing the enforcement officer the GVWR plate, the VIN number or other information of comparable reliability which demonstrates, or allows the officer to determine, that the GVWR of the vehicle is below the jurisdictional weight threshold.

Question 4: If a vehicle with a manufacturer's GVWR of less than 26,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of part 383?

Guidance: Yes. The motor carrier's intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a higher GVWR, § 390.33 allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

Question 5: When a State agency contracts with private parties for services involving the operation of CMVs, is the State agency or contractor considered the employer?

Guidance: If the contractor employs individuals and assigns and monitors their driving tasks, the contractor is considered the employer. If the State agency assigns and monitors driving tasks, then the State agency is the employer for purposes of part 383.

Question 6: A driver operates a tractor of exactly 26,000 pounds GVWR, towing a trailer of exactly 10,000 pounds GVWR, for a GCWR of 36,000 pounds. HM and passengers are not involved. Is it a CMV and does the driver need a CDL?

Guidance: No to both questions. Although the vehicle has a GCWR of 36,000 pounds, it is not a CMV under any part of the definition of that term in § 383.5, and a CDL is not federally required.

Question 7: Does the definition of a ''commercial motor vehicle'' in § 383.5 of the CDL requirements include

parking lot and/or street sweeping vehicles?

Guidance: If the GVWR of a parking lot or street sweeping vehicle is 26,001 or more pounds, it is a CMV under the CDL regulations.

Question 8: Is an employee of a Federal, State, or local government who operates a CMV, as defined in § 383.5, including an emergency medical vehicle, required to obtain a CDL? If so, why are such drivers considered as operating ''in commerce?''

Guidance: Government employees who drive CMVs are generally required to obtain a CDL. However, operators of firefighting and related emergency equipment may be exempt from the CDL requirement [53 FR 37313, September 26, 1988], at a State's discretion. Drivers of large advanced life support vehicles operated by municipalities would therefore, at a State's discretion, qualify for the exemption.

Government employees who drive CMVs are operating in ''commerce,'' as defined in § 383.5, because they perform functions that affect interstate trade, traffic, or transportation. Nearly all government CMVs are used, directly or indirectly, to facilitate or promote such trade, traffic, and transportation.

Question 9: The definition of a passenger CMV is a vehicle ''designed to transport'' more than 15 passengers, including the driver. Does that include standing passengers if the vehicle was specifically designed to accommodate standees?

Guidance: No. ''Designed to transport'' refers only to the number of designated seats; it does not include areas suitable, or even designed, for standing passengers.

Question 10: What is considered a ''public road''?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

Section 383.21 Number of Drivers' Licenses

Question 1: Are there any circumstances under which the driver of a CMV as defined in § 383.5 is allowed to hold more than one driver's license?

Guidance: Yes. A recipient of a new driver's license may hold more than one license during the 10 days beginning on the date the person is issued a driver's license.

Question 2: Is a person from Puerto Rico required to surrender his or her driver's license in order to obtain a nonresident CDL?

Guidance: Since Puerto Rico and the U.S. Territories are not included in the definition of a State in section 12016 of the CMVSA (49 U.S.C. § 31301(13)), they must be considered foreign countries for purposes of the CDL requirements. Under part 383, a person domiciled in a foreign country is not required to surrender his or her foreign license in order to obtain a nonresident CDL. There are two reasons for permitting this dual licensing to a person domiciled in Puerto Rico: (a) There is no reciprocal agreement with Puerto Rico recognizing its CMV testing and licensing standards as equivalent to the standards in part 383 and, (b) the nonresident CDL may not be recognized as a valid license to drive in Puerto Rico.

Section 383.23 Commercial Driver's License

Question 1: May a holder of a CMV learner's permit continue to hold his/her basic driver's license from any State without violating the single-license rule?

Guidance: Yes, since the learner's permit is not a license.

Question 2: The requirements for States regarding CMV learners' permits in § 383.23 appear to be ambiguous. For example, if the CMV learner's permit is ''considered a valid CDL'' for instructional purposes, is the State to enter the learner's permit issuance as a CDLIS transaction?

Guidance: No such requirement currently exists.

Question 3: Is a CDL required for CMV operations that occur exclusively in places where the general public is never allowed to operate, such as airport taxiways or other areas restricted from the public?

Guidance: No. FHWA regulations would not require a CMV driver to obtain a CDL under those circumstances. The Federal rules are minimum standards, however, and State law may require a CDL for operations not covered by part 383.

Section 383.31 Notification of Convictions for Driver Violations

Question 1: Must an operator of a CMV (as defined in § 383.5), who holds a CDL, notify his/her current employer of a conviction for violating a State or local (non-parking) traffic law in any type of vehicle, as required by § 383.31(b), even though the conviction is under appeal?

Guidance: Yes. The taking of an appeal does not vacate or annul the conviction, nor does it stay the notification requirements of § 383.31. The driver must notify his/her employer within 30 days of the date of conviction.

Section 383.33 Notification of Driver's License Suspensions

Question 1: When a driver (a) receives an Administrative Order of Suspension due to a blood alcohol reading in excess of the legal limit with notice that the suspension is not to be effective until 45 days after the notice or after an administrative hearing, and (b) a hearing is subsequently held, in effect suspending the license, what is the effective date of suspension for purposes of notifying the employer under § 383.33?

Guidance: The effective date of the suspension for notification purposes is the day the employee received notice of the suspension.

Section 383.37 Employer Responsibilities

Question 1: Section 383.37(a) does not allow employers to knowingly use a driver whose license has been suspended, revoked or canceled. Do motor carriers have latitude in their resulting actions: firing, suspension, layoff, authorized use of unused vacation time during suspension duration, transfer to nondriving position for duration of the suspension?

Guidance: Yes. The employer's minimum responsibility is to prohibit operation of a CMV by such an employee.

Question 2: a. A motor carrier recently found a driver who had a detectable presence of alcohol, placed him off-duty in accordance with § 392.5, and ordered a blood test which disclosed a blood alcohol concentration of 0.05 percent. Is the carrier obligated to place the driver out of service for 24 hours as prescribed by § 392.5(c)?

b. Is the carrier obligated to disqualify the driver for a period of one year as prescribed by §§ 383.51(b) and 391.15(c)(3)(i) of the FMCSRs?

Guidance: a. Only a State or Federal official can place a driver out of service. Instead, the carrier is obligated to place the driver off-duty and prevent him/her from operating or being in control of a CMV until he/she is no longer in violation of § 392.5.

b. No. A motor carrier has no authority to disqualify a driver. Disqualification for such an offense only occurs upon a conviction.

Question 3: If an individual driver had two convictions for serious traffic violations while driving a CMV, and neither FHWA nor his/her State licensing agency took any disqualification action, does the motor carrier have any obligation under FHWA regulations to refrain from using this driver for 60 days? If so, when does that time period begin?

Guidance: No. Only the State or the FHWA has the authority to take a disqualification action against a driver. The motor carrier's responsibility under § 383.37(a) to refrain from using the driver begins when it learns of the disqualification action and continues until the disqualification period set by the State or the FHWA is completed.

Question 4: Is a driver who has a CDL, and has been convicted of a felony, disqualified from operating a CMV under the FMCSRs?

Guidance: Not necessarily. The FMCSRs do not prohibit a driver who has been convicted of a felony, such as drug dealing, from operating a CMV unless the offense involved the use of a CMV. If the offense involved a non-CMV, or was unrelated to motor vehicles, there is no FMCSR prohibition to employment of the person as a driver.

Section 383.51 Driver Disqualifications

—General Questions—

Question 1: a. If a driver received one ''excessive speeding'' violation in a CMV and the same violation in his/her personal passenger vehicle, would the driver be disqualified? or,

b. If a driver received two ''excessive speeding'' violations in his/her personal passenger vehicle, would the driver be disqualified?

Guidance: No, in both cases. Convictions for serious traffic violations, such as excessive speeding, only result in disqualification if the offenses were committed in a CMV—unless the State has stricter regulations.

Question 2: Section 383.51 of the FMCSRs disqualifies drivers if certain offenses were committed while operating a CMV. Will the States be required to identify on the motor vehicle driver's record the class of vehicle being operated when a violation occurs?

Guidance: No, only whether or not the violation occurred in a CMV. The only other indication that may be required is if the vehicle was carrying placardable amounts of HM.

Question 3: If a CDL holder commits an offense that would normally be disqualifying, but the CDL holder is driving under the farm waiver, must conviction result in disqualification and action against the CDL holder?

Guidance: Yes. Possession of the CDL means the driver is not operating under the waiver. In addition, the waiver does not absolve the driver from disqualification under part 391.

Question 4: What is meant by leaving the scene of an accident involving a CMV?

Guidance: As used in part 383, the disqualifying offense of ''leaving the scene of an accident involving a CMV'' is all-inclusive and covers the entire range of situations where the driver of the CMV is required by State law to stop after an accident and either give information to the other party, render aid, or attempt to locate and notify the operator or owner of other vehicles involved in the accident.

Question 5: If a State disqualifies a driver for two serious traffic violations under § 383.51(c)(2)(i), and that driver, after being reinstated, commits a third serious violation, what additional period of disqualification must be imposed on that driver?

Guidance: If three years have not elapsed since the original violation, then the driver is now subject to a full 120-day disqualification period.

Question 6: May a State issue a ''conditional,'' ''occupational'' or ''hardship'' license that includes CDL driving privileges when a CDL holder loses driving privileges to operate a private passenger vehicle (non-CMV)?

Guidance: Yes, provided the CDL holder loses his/her driving privileges for operating a non-CMV as the result of a conviction for a disqualifying offense that occurred in a non-CMV. A State is prohibited, however, from issuing any type of license which would give the driver even limited privileges to operate a CMV when the conviction is for a disqualifying offense that occurred in a CMV.

Question 7: What information needs to be contained on a ''conditional,'' ''occupational'' or ''hardship'' license document that includes CDL driving privileges?

Guidance: The same information that is required under § 383.153, including an explanation of restrictions of driving privileges.

Question 8: Is a State obligated to grant reciprocity to another State's ''conditional,'' ''occupational'' or ''hardship'' license that includes CDL driving privileges?

Guidance: Yes, in regard to operating a CMV as stated in § 383.73(h).

Section 383.51 Driver Disqualifications

—Alcohol Questions—

Question 1: Are States expected to make major changes to their enforcement procedures in order to apply the alcohol disqualifications in the Federal regulations?

Guidance: No. Sections 383.51 and 392.5 do not require any change in a State's existing procedures for initially stopping vehicles and drivers.

Roadblocks, random testing programs, or other enforcement procedures which have been held unconstitutional in the State or which the State does not wish to implement are not required.

Question 2: Is a driver disqualified for driving a CMV while off-duty with a blood alcohol concentration over 0.04 percent?

Guidance: Yes. Section 383.51 applies to any person who is driving a CMV, as defined in § 383.5, regardless of the person's duty status under other regulations. Therefore, the driver, if convicted, would be disqualified under § 383.51.

Question 3: Does a temporary license issued pursuant to the administrative license revocation (ALR) procedure authorize the continued operation of CMVs when the license surrendered is a CDL? Does the acceptance of a temporary driver's license place the CDL holder in violation of the one driver's license requirement?

Guidance: The ALR procedure of taking possession of the driver's CDL and issuing a ''temporary license'' for individuals who either fail a chemical alcohol test or refuse to take the test is valid under the requirements of part 383. Since the CDL that is being held by the State is still valid until the administrative revocation action is taken, the FHWA would interpret the document given to the driver as a ''receipt'' for the CDL, not a new ''temporary'' license. The driver violates no CDL requirements for accepting the receipt which may be used to the extent authorized.

Question 4: Is a driver disqualified under § 383.51 if convicted of driving under the influence of alcohol while operating a personal vehicle?

Guidance: The convictions triggering mandatory disqualification under § 383.51 all pertain to offenses that occur while the person is driving a CMV. However, a driver could be disqualified under § 383.51(b)(2)(i) if the State has stricter standards which apply to offenses committed in a personal vehicle. (The same principle applies to all other disqualifying offenses listed in § 383.51.)

Question 5: Would a driver convicted under a State's ''open container'' law be disqualified under the CDL regulations if the violation occurred while he/she was operating a CMV?

Guidance: If a conviction under a particular State's ''open container law'' is a conviction for ''driving under the influence'' or ''driving while intoxicated,'' and if the person committed the violation while driving a CMV, then the driver is disqualified for one year under § 383.51, assuming it is a first offense.

Section 383.71 Driver Application Procedures

Question 1: What must a driver certify if he/she is in interstate commerce but is excepted or exempted from part 391 under the provisions of parts 390 or 391?

Guidance: The State should instruct the driver to certify that he/she is not subject to part 391.

Question 2: Since an applicant is required to turn in his/her current license when issued an FRSI-restricted CDL, should the applicant return to the State exam office and be re-issued the old license when the seasonal validation period expires?

Guidance: No. This approach violates the requirements of part 383 and the FRSI waiver regarding the single-license concept. It violates the waiver requirement that the FRSI-restricted CDL is to have the same renewal cycle as an unrestricted CDL and shall serve as an operator's license for vehicles other than CMVs. The license issued under the waiver is a CDL and must be treated the same as an unrestricted CDL in regard to the driver record being maintained through the CDLIS and subject to all disqualifying conditions for the full renewal cycle. The restriction determining when the driver may use the CDL to operate a CMV should be clearly printed on the license.

Question 3: Do the regulations require that a driver be recertified for the hazardous materials ''H'' endorsement every two years?

Guidance: No. If the driver wishes to retain an HM endorsement, he/she is required at the time of license renewal to pass the test for such endorsement. The only times a driver may be required to pass the test for such endorsement in a condensed time frame is within the 2 years preceding a license transfer if he/she is transferring a CDL from one State of domicile to a new State of domicile (see § 383.73(b)(4)), or if the State has exercised its prerogative to establish more stringent requirements.

Question 4: May a CDL driving skills test examiner conduct a driving skills test administered in accordance with 49 CFR part 383 before a person subject to Part 382 is tested for alcohol and controlled substances?

Guidance: Yes. A CDL driving skills test examiner, including a third party examiner, may administer a driving skills test to a person subject to Part 382 without first testing him/her for alcohol and controlled substances. The intent of the CDL driving skills test is to assess a person's ability to operate a commercial motor vehicle during an official government test of their driving skills. However, this guidance does not allow an employer (including a truck or bus driver training school) to use a person as a current company, lease, or student driver prior to obtaining a verified negative test result. An employer must obtain a verified negative controlled substance test result prior to dispatching a driver on his/her first trip.

Section 383.73 State Procedures

Question 1: Does the State have any role in certifying compliance with § 391.11(b)(2) of the FMCSRs, which requires driver competence in the English language?

Guidance: No. The driver must certify that he or she meets the qualifications of part 391. The State is under no duty to verify the certification by giving exams or tests.

Question 2: Are States required to change their current medical standards for drivers who need CDLs?

Guidance: No, but interstate drivers must continue to meet the Federal standards, while intrastate drivers are subject to the requirements adopted by the State.

Question 3: To what does the phrase ''. . . as contained in § 383.51'' refer to in § 383.73(a)(3)?

Guidance: The phrase refers only to the word ''disqualification.'' Thus the State must check the applicant's record to ensure that he/she is not subject to any suspensions, revocations, or cancellations for any reason, and is not subject to any disqualifications under § 383.51.

Question 4: Is a State required to refuse a CDL to an applicant if the NDR check shows that he/she had a license suspended, revoked, or canceled within 3 years of the date of the application?

Guidance: Yes, if the person's driving license is currently suspended, revoked, or canceled.

Question 5: Must a new State of record accept the out-of-State driving record on CDL transfer applications and include this record as a permanent part of the new State's file?

Guidance: Yes.

Question 6: What does the term ''initial licensure'' mean as used in § 383.73?

Guidance: The term ''initial licensure'' as used in the context of § 383.73 is meant to refer to the procedures a State must follow when a person applies for his/her first CDL.

Question 7: May a State allow an applicant to keep his/her current valid State license when issued an FRSI-restricted CDL?

Guidance: No. That would violate the single-license concept.

Question 8: Does the word ''issuing'' as used in § 383.73(a) include temporary 60-day CDLs as well as permanent CDLs?

Guidance: Yes, the word ''issuing'' applies to all CDLs whether they are temporary or permanent.

Question 9: When a State chooses to meet the certification requirements of § 383.73 (a)(1), (b)(1), (c)(1) and (d)(1) by demanding, as part of its licensing process, that a commercial driver maintain with the Department of Motor Vehicles (DMV) currently valid evidence of compliance with the physical qualification standards of part 391, subpart E, may the State suspend, cancel or revoke the driver's CDL if he/she does not maintain such evidence with the DMV?

Guidance: Yes. Section 383.73 requires a State to obtain from a driver applicant a certification that he/she meets the qualification standards of part 391, including subpart E (Physical Qualifications and Examinations). A requirement that a driver maintain currently valid evidence of compliance with subpart E does not conflict with part 383, since the CMVSA made it clear that the DOT was to issue ''regulations to establish minimum Federal standards * * *'' (49 U.S.C. 31305(a)). A State may therefore demand more information or tests than the Federal CDL regulations require. If a driver fails to comply with State requirements which are not inconsistent with part 383, the State may suspend, cancel or revoke the driver's CDL. This action is not a disqualification for purposes of § 383.51, but a withdrawal of the commercial driving privilege.

Question 10: What action should enforcement officers take when a commercial driver's CDL has been declared invalid by the issuing State because of a lapse in the driver's medical certificate?

Guidance: Whatever the reason for the State's decision, a driver with an invalid CDL may not lawfully drive a CMV.

Question 11: May licensing jurisdictions meet their stewardship requirements for surrendered licenses by physically marking the license in some way as not valid and returning it to a driver as part of the driver's application for a new or renewal of an existing CDL?

Guidance: Yes. Provided the licensing jurisdiction meets the test of guaranteeing that the returned license document cannot possibly be mistaken for a valid document by a casual observer. A document perforated with the word ''VOID'' conspicuously and unmistakably displayed with holes large enough to be easily distinguished by a

casual observer in limited light, which cannot be obscured by the holder of the document, would meet the test of being invalidated.

Section 383.75 Third Party Testing

Question 1: May the CDL knowledge test be administered by a third party?

Guidance: No. The third party testing provision found in § 383.75 applies only to the skills portion of the testing procedure. However, if an employee of the State who is authorized to supervise knowledge testing is present during the testing, then the FHWA regards it as being administered by the State and not by the third party.

Question 2: Do third party skills test examiners have to meet all the requirements of State-employed examiners—i.e. all the State's qualification and training standards?

Guidance: No. Section 383.75(a)(2)(iii) requires third party examiners to meet the same standards as State examiners only ''to the extent necessary to conduct skills tests.''

Question 3: Do third-party skills test examiners have to be qualified to administer skills tests in all types of CMVs?

Guidance: No.

Section 383.77 Substitute for Driving Skills Test

Question 1: May a State grandfather drivers from skills testing under § 383.77?

Guidance: Yes, provided the applicant meets all the eligibility conditions under § 383.77, including current operation of a CMV (§ 383.77(b)(1)). Therefore, the pool of applicants eligible for grandfathering is limited to drivers with current CMV operating experience under a CDL waiver (e.g., farm, FRSI, firefighting, emergency and military vehicles).

Question 2: May a driver applicant be ''grandfathered'' from any CDL knowledge test?

Guidance: No. ''Grandfathering'' of CDL basic or endorsement knowledge testing is not permitted by part 383.

Section 383.91 Vehicle Groups

Question 1: May a State expand a vehicle group to include vehicles that do not meet the Federal definition of the group?

Guidance: Yes, if: a. A person who tests in a vehicle that does not meet the Federal standard for the Group(s) for which the issued CDL would otherwise be valid, is restricted to vehicles not meeting the Federal definition of such Group(s); and

b. The restriction is fully explained on the license.

Question 2: Is a driver of a combination vehicle with a GCWR of less than 26,001 pounds required to obtain a CDL even if the trailer GVWR is more than 10,000 pounds?

Guidance: No, because the GCWR is less than 26,001 pounds. The driver would need a CDL if the vehicle is transporting HM requiring the vehicle to be placarded or if it is designed to transport 16 or more persons.

Question 3: Can a State which expands the vehicle group descriptions in § 383.91 enforce those expansions on out-of-State CMV drivers by requiring them to have a CDL?

Guidance: No. They must recognize out-of-State licenses that have been validly issued in accordance with the Federal standards and operative licensing compacts.

Question 4: What CMV group are drivers of articulated motorcoaches (buses) required to possess?

Guidance: Drivers of articulated motorcoaches are required to possess a Class B CDL.

Question 5: Do tow truck operators need CDLs? If so, in what vehicle group(s)?

Guidance: For CDL purposes, the tow truck and its towed vehicle are treated the same as any other powered unit towing a nonpowered unit:

—*If* the GCWR of the tow truck and its towed vehicle is 26,001 pounds or more, and the towed vehicle alone exceeds 10,000 pounds GVWR, *then* the driver needs a Group A CDL.

—*If* the GVWR of the tow truck alone is 26,001 pounds or more, and the driver either (a) drives the tow truck without a vehicle in tow, or (b) drives the tow truck with a towed vehicle of 10,000 pounds or less GVWR, *then* the driver needs a Group B CDL.

—A driver of a tow truck or towing configuration that does not fit either configuration description above, requires a Group C CDL *only* if he or she tows a vehicle required to be placarded for hazardous materials on a ''subsequent move,'' i.e. after the initial movement of the disabled vehicle to the nearest storage or repair facility.

Section 383.93 Endorsements

Question 1: Is the HM endorsement needed for operation of State and local government vehicles carrying HM?

Guidance: No.

Question 2: Are drivers of double and triple saddle mount combinations required to have the double/triple trailers endorsement on their CDLs?

Guidance: Yes, if the following conditions apply:

—There is more than one point of articulation in the combination;

—The GCWR is 26,001 or more pounds; and

—The combined GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

Question 3: Are drivers delivering empty buses in driveaway-towaway operations required to have the passenger endorsement on their CDLs?

Guidance: No.

Question 4: Would the driver in the following scenarios be required to have a CDL with a HM endorsement?

a. A driver transports 1,000 or more pounds of Division 1.4 (Class C explosive) materials in a vehicle with a GVWR of less than 26,001 pounds?

b. A driver transports less than 1,000 pounds of Division 1.4 (Class C explosive) materials in a vehicle with a GVWR of less than 26,001 pounds?

c. The driver transports any quantity of Division 1.1, 1.2 or 1.3 (Class A or B explosive) materials in any vehicle.

Guidance: a. Yes.

b. No.

c. Yes.

Question 5: Do drivers of ready-mix concrete mixers need a tank vehicle endorsement (''N'') on their CDL?

Guidance: No.

Question 6: Does an unattached tote or portable tank with a cargo capacity of 1,000 gallons or more meet the definition of ''portable tank'' requiring a tank vehicle endorsement on the driver's CDL?

Guidance: Yes.

Question 7: Must all drivers of vehicles required to be placarded have CDLs containing the HM endorsement?

Guidance: Yes, unless waived.

Question 8: Is a driver who operates a truck tractor pulling a heavy-haul trailer with a ''jeep'' attached to the front of the trailer that meets the definition of a CMV under part 383 required to have a CDL with a double/triple trailer endorsement?

Guidance: Yes. The ''jeep,'' also referred to as a dolly or load divider, is a short frame-type trailer complete with upper coupler, fifth wheel and undercarriage assembly and designed in such a manner that when coupled to a semitrailer and tractor it carries a portion of the trailer kingpin load while transferring the remainder to the tractor's fifth wheel.

Question 9: Do persons transporting battery-powered forklifts need to obtain an HM endorsement?

Guidance: No.

Question 10: Do tow truck operators who hold a CDL require endorsements to tow ''endorsable'' vehicles?

Guidance: For CDL endorsement purposes, the nature of the tow truck operations determines the need for endorsements:

—*If* the driver's towing operations are restricted to emergency ''first moves'' from the site of a breakdown or accident to the nearest appropriate repair facility, *then* no CDL endorsement of any kind is required.

—*If* the driver's towing operations include any ''subsequent moves'' from one repair or disposal facility to another, *then* endorsements requisite to the vehicles being towed are required. *Exception:* Tow truck operators need not obtain a passenger endorsement.

Section 383.95 Air Brake Restrictions

Question 1: A driver has a Group B or C CDL valid for airbrake-equipped vehicles. He or she later upgrades to a Group A license by testing in a vehicle that is not equipped with airbrakes. Must the State restrict the upgraded license to nonairbrake-equipped vehicles?

Guidance: No, because the airbrake systems on combination versus single vehicles do not differ significantly.

Question 2: May a driver who has an air brake restriction as defined in § 383.95 operate a CMV equipped with an air-over-hydraulic brake system?

Guidance: No. Under § 383.95(b), the term ''air brakes'' includes any braking system operating fully or partially on the air brake principle. Air-over-hydraulic brake systems operate partially on the air brake principle and are therefore air brakes for purposes of the CDL regulations. The NHTSA also considers ''air over hydraulic'' brakes to be air brakes under FMVSS 121.

Question 3: May a State issue a restriction to a driver who passes the air brake knowledge test and the skills test in a vehicle equipped with an air-over-hydraulic brake system that limits the driver to operate only vehicles equipped with an air-over-hydraulic air brake system?

Guidance: Yes. A State may issue the additional restriction, provided it is fully explained on the CDL. This would give a State the option to allow a driver who tests in a vehicle equipped with an air-over-hydraulic brake system (rather than a full air brake system) to operate a vehicle equipped with either a hydraulic or air-over-hydraulic brake system, while restricting them from operating vehicles equipped with a full air brake system.

Question 4: May a driver with an air brake restriction on his or her CDL operate a CMV equipped with a hydraulic braking system that has an air-assisted parking brake release?

Guidance: Yes. The air brake restriction applies only to the principal braking system used to stop the vehicle. Section 383.95(b) is not applicable to an air-assisted mechanism to release the parking brake.

Section 383.131 Test Procedures

Question 1: Are there any Federal regulations which require the States to retain for a specified period of time the CDL knowledge tests (or the test results) used to test CMV drivers?

Guidance: No, there are no Federal regulations regarding such record retention.

Section 383.133 Testing Methods

Question 1: May States administer the CDL knowledge and endorsement test in foreign languages or in other than a written format?

Guidance: Yes.

Question 2: Do the Federal standards limit the number of times a driver may take a test if he or she fails?

Guidance: The rule does not limit the number of times a driver may take a test.

Question 3: Is a State allowed to provide for an alternative test (e.g., oral) or administer an alternate exam format providing the test meets FHWA requirements?

Guidance: Yes. The knowledge portion of the test may be administered in written form, verbally, in automated formats, or otherwise at the discretion of the State.

Section 383.153 Information on the Document and Application

Question 1: May a State use the residence address as opposed to the mailing address on the CDL?

Guidance: Yes.

Question 2: May a State issue temporary nonphoto CDLs?

Guidance: Yes, as long as:

a. the State does not liberalize any existing procedures for issuing nonphoto licenses; and

b. the State does not allow drivers to operate CMVs indefinitely without a CDL which meets all the standards of § 383.153.

Question 3: May a State choose to implement a driver license system involving multiple part license documents?

Guidance: Yes. A two or more part document, as currently used in some States, is acceptable, provided:

a. All of the documents must be present to constitute a ''license;''

b. Each document is explicitly ''tied'' to the other document(s), and to a single driver's record. Each document must indicate that the driver is licensed as a CMV driver, if that is the case; and

c. The multipart license document includes all of the data elements specified in part 383, subpart J.

Question 4: If the State restricts the CDL driving privilege, must that restriction be shown on the license?

Guidance: Yes.

Question 5: Is a State required to show the driver's SSN on the CDL?

Guidance: No. Section 383.153 does not specify the SSN as a required element of the CDL document although the regulation does require a driver applicant who is domiciled in the U.S. to provide his or her SSN on the CDL application.

Question 6: Is a State prohibited from issuing a CDL to an applicant who, for religious reasons, does not possess an SSN?

Guidance: No. The determination of whether a person needs an SSN is left up to the Social Security Administration.

Question 7: Is a color-digitized image of a driver acceptable for purposes of a CDL?

Guidance: Yes. The FHWA will accept a color-digitized image of a driver on a CDL in lieu of a color photograph.

Special Topics—Motor Coaches and CDL

Question 1: May a State develop a knowledge test exclusively for motorcoach operators which excludes cargo handling and hazardous materials?

Guidance: Yes. A State could develop a basic knowledge test for bus drivers only, by deleting the cargo handling and HM questions from its normal basic knowledge test. In that case, the driver applicant would still need to pass the specialized knowledge and skills tests for the passenger endorsement, and the State would need to restrict the CDL to passenger operations only.

Question 2: What skills test is required for a CDL holder seeking to add a passenger endorsement?

Guidance: If a person already holds a CDL without a passenger endorsement, and subsequently applies for such endorsement, three situations may arise:

a. The passenger test vehicle is in the same vehicle group as that shown on the CDL. This situation poses no problem since there is no discrepancy.

b. The passenger test vehicle is in a greater vehicle group than that shown on the preexisting CDL. This is an upgrade situation. The driver and the State must meet the requirements of §§ 383.71(d) and 383.73(d), and the upgraded CDL must show the vehicle group of the passenger test vehicle.

c. The passenger test vehicle is in a lesser vehicle group than that shown on the preexisting CDL. In this situation, the CDL retains the vehicle group of the preexisting CDL, but also restricts the driver, when engaged in CMV passenger operations, to vehicles in the group in which the passenger skills test was taken, or to a lesser group.

Special Topics—State Reciprocity

Question 1: May a State place an ''intrastate only'' or similar restriction on the CDL of a driver who certifies that he or she is not subject to part 391?

Guidance: Yes; however, this restriction would not apply to drivers in interstate commerce who are excepted or exempted from part 391 under the provisions of parts 390 or 391.

Question 2: May a State allow a driver possessing an out-of-State CDL containing an intrastate restriction to operate a CMV in their jurisdiction?

Guidance: Yes, provided the driver operates exclusively intrastate.

Question 3: May States choose to interpret ''intrastate'' in ways that differ from established transportation practice?

Guidance: No. States do not have the discretion to change the Federal definition of either ''interstate'' or ''intrastate'' commerce.

Special Topics—International

Question 1: The driver's medical exam is part of the Mexican Licencia Federal. If a roadside inspection reveals that a Mexico-based driver has not had the medical portion of the Licencia Federal re-validated, is the driver considered to be without a valid medical certificate or without a valid license?

Guidance: The Mexican Licencia Federal is issued for a period of 10 years but must be re-validated every 2 years. A condition of re-validation is that the driver must pass a new physical examination. The dates for each re-validation are on the Licencia Federal and must be stamped at the completion of each physical. This constitutes documentation that the driver is medically qualified. Therefore, if the Licencia Federal is not re-validated every 2 years as specified by Mexican law, the driver's license is considered invalid.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

Sections Interpreted

384.209 Notification of traffic violations
384.211 Return of Old Licenses

Section 384.209 Notification of Traffic Violations

Question 1: Must a CDL holder's out-of-State conviction for a traffic violation be included in the driving record of the State of licensure (and thus CDLIS), if there are no traffic violation points assigned to the conviction?

Guidance: All out-of-State convictions of a CDL holder for traffic violations committed in any vehicle must be sent to the State of licensure, but only the convictions for offenses specified in 49 CFR 383.51 must be included in that State's driving record (and thus CDLIS). Assigning points to a conviction is strictly a State decision and has no bearing on the inclusion of the conviction.

The FHWA recommends the inclusion by the State of licensure of all convictions of a CDL holder for traffic violations committed in any vehicle, so that the State will have the full driver record available as an aid in making licensing decisions.

Question 2: Must the licensing agency establish a commercial driver record, including a CDLIS pointer record, for a person holding a non-commercial license issued by that jurisdiction upon receiving notification of a conviction of any offense committed while (illegally) operating a CMV?

Guidance: Yes.

Section 384.211 Return of Old Licenses

Question 1: May licensing jurisdictions meet their stewardship requirements for surrendered licenses by physically marking the license in some way as not valid and returning it to a driver as part of the driver's application for a new or renewal of an existing CDL?

Guidance: Yes. Provided the licensing jurisdiction meets the test of guaranteeing that the returned license document cannot possibly be mistaken for a valid document by a casual observer. A document perforated with the word ''VOID'' conspicuously and unmistakably displayed with holes large enough to be easily distinguished by a casual observer in limited light, which cannot be obscured by the holder of the document would meet the test of being invalidated.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

Sections Interpreted

386.1 Scope of Rules in this Part

Section 386.1 Scope of Rules in This Part

Question 1: What is the authority of the RDMC to issue provisions as a part of the terms in a Notice of Abatement, Notice of Assessment, Compliance Order and Consent Order?

Guidance: The MCSA of 1984 provided the authority to penalize violators of Notices and Orders issued by the FHWA. Regulations were issued under part 386 which specify these penalties. Notices to Abate and Notices of Assessment/Claim generally deal with specific regulatory requirements. Consent Orders and Compliance Orders often require remedial measures not specifically mentioned in the FMCSRs since the motor carrier's compliance record often indicates that additional measures are needed to improve safety and compliance with the regulations.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Sections Interpreted

Subpart A—Motor Carriers of Property

387.1 Purpose and Scope
387.3 Applicability
387.5 Definitions
387.7 Financial Responsibility Required
387.9 Financial Responsibility, Minimum Levels
387.11 State Authority and Designation of Agent
387.15 Forms

Subpart B—Motor Carriers of Passengers

387.25 Purpose and Scope
387.27 Applicability
387.31 Financial Responsibility Required
387.39 Forms

Subpart A—Motor Carriers of Property

Section 387.1 Purpose and Scope

Question 1: May a State require a higher level of financial responsibility coverage than is required by part 387?

Guidance: Yes.

Section 387.3 Applicability

Question 1: At what GVWR, as assigned by a manufacturer, does the requirement to comply with the financial responsibility regulations begin?

Guidance: Generally, part 387, subpart A applies if the vehicle has a GVWR of 10,000 pounds or more. Part 387, subpart A, does not apply to the intrastate transportation of nonbulk oil, nonbulk HM, substances or wastes. Motor vehicles used to transport any quantity of Divisions 1.1, 1.2 or 1.3 (explosive) materials, poison gas, or highway route controlled quantity of radioactive materials in interstate or foreign commerce are subject to Federal regulation regardless of the GVWR.

Question 2: Does the GVWR apply to the power unit only?

Guidance: No.

Question 3: When are tow trucks subject to financial responsibility coverage?

Guidance: For-hire tow trucks with a GVWR or GCWR of 10,000 pounds or more performing emergency moves in interstate or foreign commerce are required to maintain minimum levels of financial responsibility in the amount of $750,000. For-hire tow trucks performing secondary moves are required to maintain levels of coverage applicable to the commodity being transported by the vehicle being towed.

Question 4: Are Federal, State or local political subdivisions subject to the financial responsibility regulations?

Guidance: No.

Question 5: Is a motor vehicle owned by an owner-operator, and being dead-headed (returning empty), or a tractor that is being bobtailed (operating without a trailer), subject to the financial responsibility regulations?

Guidance: A motor vehicle deadheading or bobtailing while in the service of a motor carrier would be subject to the financial responsibility regulations.

Question 6: Is a motor carrier transporting mail under contract for the U.S. Postal Service wholly within the boundaries of a single State subject to the minimum levels of financial responsibility requirements of part 387?

Guidance: Yes. The transportation of U.S. mail is considered to be interstate commerce because of the intermingling of inter- and intrastate mail on every vehicle.

Question 7: Are motor carriers transporting HM that are excepted from the HMRs subject to financial responsibility regulations?

Guidance: Yes. Packaging or transportation exceptions in the HMRs do not change the need for financial responsibility at the appropriate level commensurate with the commodity being transported.

Question 8: Are motor vehicles being transported considered to be HM for purposes of the financial responsibility requirements, thus requiring the higher limits set forth in the regulations?

Guidance: No, while motor vehicles are identified as HM in the Hazardous Materials Table at § 172.101, motor vehicles, by themselves, are not to be treated as HM and should be considered nonhazardous property.

Question 9: Is a travel trailer or motor home that has propane cylinders attached subject to part 387 of the FMCSRs?

Guidance: No. The FHWA considers such propane cylinders to be an integral part of the recreational vehicle and not subject to the financial responsibility regulations.

Section 387.5 Definitions

Question 1: Does the definition of the term ''in bulk'' include solids as well as liquids even though the definition refers to containment systems with capacities in excess of 3,500 water gallons?

Guidance: Yes, the term ''3,500 water gallons'' is used as a volumetric value and includes solids as well as liquids.

Section 387.7 Financial Responsibility Required

Question 1: May a large corporation which has many wholly owned subsidiaries have one policy for the parent corporation and maintain the policy and the Form MCS–90 at the corporate headquarters?

Guidance: Generally, the required financial responsibility must be in the exact name of the motor carrier and the proof of that coverage must be maintained at the motor carrier's principal place of business. A parent corporation may, however, have a single policy of insurance or surety bond covering the parent and its subsidiaries, provided the name of the parent and the name of each subsidiary are listed on the policy or bond. Further, the required proof must have listed thereon the name of the parent and its subsidiaries. A copy of that proof of financial responsibility coverage must be maintained at each motor carrier subsidiary's principal place of business.

Question 2: What is the definition of ''Certificate of Registration'' in § 387.7(b)(3)?

Guidance: ''Certificate of Registration'' means a document issued by the FHWA to all Mexican motor carriers, for-hire as well as private, that allows them to enter the U.S., but restricts them to the commercial zone for a particular border municipality, as previously adopted by the ICC. The border municipality is the Port of Entry wherever the motor carrier's vehicle enters the U.S.

Question 3: How does a Mexican motor carrier prove that it is complying with § 387.7?

Guidance: Mexican motor carriers are permitted to obtain trip insurance and are required to carry, on the vehicle, a Form MCS–90 along with an insurance verification document listing the date and time the insurance coverage began and expires.

Question 4: Is the financial responsibility requirement met when an owner-operator (lessor) provides the motor carrier (lessee) a copy of the policy and Form MCS–90 where the carrier is named as an additional insured to the policy (Form MCS–90)?

Guidance: No. The motor carrier has the responsibility to obtain the proper financial responsibility levels.

Section 387.9 Financial Responsibility, Minimum Levels

Question 1: Is gasoline listed as a hazardous material, and, if so, what is the minimum level of financial responsibility currently required?

Guidance: Gasoline is a listed hazardous material in the table found at 49 CFR 172.101. Section 387.9 requires for-hire and private motor carriers transporting any quantity of oil in interstate or foreign commerce to have a minimum $1,000,000 of financial responsibility coverage. The Clean Water Act of 1973, as amended, declares that gasoline is an ''oil,'' not a ''hazardous substance.'' The $1,000,000 coverage also applies to for-hire and private motor carriers transporting gasoline ''in-bulk'' in intrastate commerce.

Question 2: Is a motor carrier transporting liquefied petroleum gas (LPG) in any quantity required to have $1,000,000 or $5,000,000 of financial responsibility coverage?

Guidance: Liquefied petroleum gas (LPG) is a flammable compressed gas. All transportation of LPG in containment systems with capacities in excess of 3,500 water gallons requires $5 million financial responsibility coverage. Interstate and foreign commerce movements of LPG in containment systems *not* in excess of 3,500 water gallons requires $1 million coverage. Intrastate movements of LPG in those smaller containment systems are subject *only* to state financial responsibility requirements.

Question 3: What is the definition of a ''hopper type'' vehicle as indicated in § 387.9?

Guidance: A ''hopper type'' vehicle is one which is capable of discharging its load through a bottom opening without tilting. This vehicle type would also include belly dump trailers. Rear dump trailers and roll-off containers do not meet the definition of a bottom discharging vehicle.

Section 387.11 State Authority and Designation of Agent

Question 1: How does a Mexican motor carrier demonstrate that its insurance company complies with § 387.11?

Guidance: With a properly executed Form MCS–90 from an insurance company licensed in the U.S.

Section 387.15 Forms

Question 1: May the motor carrier meet the financial responsibility requirements by aggregating insurance in layers?

Guidance: Yes. A motor carrier may aggregate coverage, by purchasing insurance in layers with each layer consisting of a separate policy and endorsement. The first layer of coverage is referred to as primary insurance and each additional layer is referred to as excess insurance. Example: ABC Motor Carrier transports Division 1.1 explosive material and is required to maintain $5 million coverage. ABC Motor Carrier decides to meet this requirement by purchasing a primary insurance policy of $1 million from insurance company A, an excess policy of $1 million from insurance company B, and a $3 million excess policy from insurance company C. Each policy would have a separate endorsement (Form MCS–90). The endorsement provided by insurer A would state ''This insurance is primary and the company shall not be liable for amounts in excess of $1,000,000 for each accident.'' The endorsement provided by insurer B would state ''This insurance is excess and the company shall not be liable for amounts in excess of $1 million for each accident in excess of the underlying limit of $1 million for each accident.'' The endorsement provided by insurer C would state ''This insurance is excess and the company shall not be liable for amounts in excess of $3 million for each accident in excess of the underlying limit of $2 million for each accident.''

Question 2: May the Form MCS–90 required by part 387 for proof of minimum financial responsibility be modified?

Guidance: The prescribed text of the document may not be changed. However, the format (i.e., number of pages, layout of the text, etc.) may be altered.

Question 3: Is the use of a printed or stamped signature on the Form MCS–90 endorsement acceptable?

Guidance: Yes.

Question 4: Must a motor carrier obtain a new Form MCS–90 each year if it retains the same insurance company?

Guidance: If the insurance policy, as identified by the policy number on the Form MCS–90, is still valid upon the renewal of insurance, no new Form MCS–90 is required. If the policy number has changed or the insurance policy has been canceled in accordance with the terms shown on Form MCS–90, then a new Form MCS–90 must be completed and attached to the valid insurance policy.

Subpart B—Motor Carriers of Passengers

Section 387.25 Purpose and Scope

Question 1: May a State require a higher level of financial responsibility coverage than is required by part 387?

Guidance: Yes.

Section 387.27 Applicability

Question 1: Is a nonprofit corporation, providing for-hire interstate transportation of passengers, subject to the minimum levels of financial responsibility for motor carriers of passengers?

Guidance: Yes.

Question 2: What determines the level of coverage required for a passenger carrier: the number of passengers or the number of seats in the vehicle?

Guidance: The level of financial responsibility required is predicated upon the manufacturer's designed seating capacity, not on the number of passengers riding in the vehicle at a particular time. The minimum levels of financial responsibility required for various seating capacities are found in § 387.33.

Question 3: Are luxury limousines with a seating capacity of fewer than seven passengers and not operated on a regular route or between specified points exempted under § 387.27(b)(2)?

Guidance: No. Taxi cab service is highly regulated by local governments, usually conducted in marked vehicles, which makes them readily identifiable to enforcement officials. Limousines are not taxi cabs and are therefore not exempted from the financial responsibility requirements.

Question 4: When must a contract school bus operator comply with part 387?

Guidance: When the contractor is not engaged in transportation to or from school and the transportation is not organized, sponsored, and paid for by the school district.

Question 5: Does the exemption for the transportation of school children end at the high school level or does it extend to educational institutions beyond high school, for example junior college or college?

Guidance: The exemption does not extend beyond the high school level.

Section 387.31 Financial Responsibility Required

Question 1: May a large corporation which has many wholly-owned subsidiaries have one policy of insurance for the parent corporation and maintain the policy and Form MCS–90B at the corporate headquarters?

Guidance: Generally, the required financial responsibility must be in the exact name of the motor carrier and the proof of that coverage must be maintained at the motor carrier's principal place of business. A parent corporation may, however, have a single policy of insurance or surety bond covering the parent and its subsidiaries, provided the name of the parent and the name of each subsidiary are listed on the policy or bond. Further, the required proof must have listed thereon the name of the parent and its subsidiaries. A copy of that proof of financial responsibility coverage must be maintained at each motor carrier subsidiary's principal place of business.

Section 387.39 Forms

Question 1: May a motor carrier of passengers meet the financial responsibility requirements by aggregating insurance in layers?

Guidance: Yes. A motor carrier of passengers may aggregate coverage, by purchasing insurance in layers with each layer consisting of a separate policy and endorsement. The first layer of coverage is referred to as primary insurance and each additional layer is referred to as excess insurance. Each policy would have a separate endorsement (Form MCS–90B). The endorsement provided by insurer A would state ''This insurance is primary and the company shall not be liable for amounts in excess of $1,500,000 or $5,000,000 for each accident.'' The endorsement provided by insurer B would state ''This insurance is excess and the company shall not be liable for amounts in excess of $1 million for each accident in excess of the underlying limit of $1,500,000 or $5,000,000 million for each accident.'' The endorsement provided by insurer C would state ''This insurance is excess and the company shall not be liable for amounts in excess of $3 million for each accident in excess of the underlying limit of $2 million for each accident.''

Question 2: May the Form MCS–90B required by part 387 for proof of minimum financial responsibility be modified?

Guidance: The prescribed text of the document may not be changed. However, the format (i.e., number of pages, layout of the text, etc.) may be altered.

Question 3: Is the use of a facsimile signature (e.g., printed, stamped, autopenned, etc.) on the Form MCS–90B endorsement acceptable?

Guidance: Yes.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Sections Interpreted

390.3 General Applicability
390.5 Definitions
390.9 State and Local Laws, Effect on
390.15 Assistance in Investigations and Special Studies
390.21 Marking of Commercial Motor Vehicles
390.23 Relief From Hours-of-Service Regulations—Disasters
390.31 Copies of Records or Documents

Special Topics—Serious Pattern of Violations

Section 390.3 General Applicability

Question 1: Does the government exception in § 390.3(f)(2) apply to motor carriers doing business with the government?

Guidance: No. The exception applies only when the government is the motor carrier.

Question 2: Are the FMCSRs applicable to drivers and CMVs which transport tools, equipment, and supplies across State lines in a CMV?

Guidance: Yes, the FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the tools, equipment and supplies.

Question 3: Are the operations of a church which provides bus tours to the general public for compensation subject to the FMCSRs as a for-hire motor carrier?

Guidance: Yes, the church is a for-hire motor carrier of passengers subject to the FMCSRs.

Question 4: Are the FMCSRs applicable to the rail movement of trailers and intermodal container chassis that previously or subsequently were moved by highway by a motor carrier in interstate commerce?

Guidance: No. They are only subject when being moved as a motor vehicle by highway by a motor carrier.

Question 5: Are personnel involved in road testing CMVs across a State line subject to the FMCSRs?

Guidance: Yes, any driver (including mechanics, technicians, driver trainees and other personnel) operating a CMV in interstate commerce must be in compliance with the FMCSRs.

Question 6: How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs?

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Question 7: Are Red Cross vehicles/drivers subject to the FMCSRs?

Guidance: Red Cross vehicles/drivers used to provide emergency relief under the provisions of § 390.23 are not subject to the FMCSRs while providing the relief. However, these vehicles/drivers would be subject when operating at other times, provided they are used in interstate commerce and the vehicles meet the definition of a CMV.

Question 8: May a motor carrier require fingerprinting as a pre-employment condition?

Guidance: The FMCSRs do not require or prohibit fingerprinting as a condition of employment. Section 390.3(d) allows employers to enforce more stringent requirements.

Question 9: Are the FMCSRs applicable to drivers/vehicles operated by a State or local educational institution which is a political subdivision of the State?

Guidance: Section 390.3(f)(2) specifically exempts transportation performed by a State or a political subdivision including any agency of a State or locality from the FMCSRs. The drivers, however, may be subject to the CDL requirements and/or State laws that are similar to the FMCSRs.

Question 10: Are the FMCSRs applicable to drivers/vehicles operated by a transit authority owned and operated by a State or a political subdivision of the State?

Guidance: Section 390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

Question 11: Is the interstate transportation of students, teachers and parents to school events such as athletic contests and field trips performed by municipalities subject to the FMCSRs? If a fee is charged to defer the municipality's expenses, does this affect the applicability of the regulations?

Guidance: Section 390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. Charging a fee to defer governmental costs does not affect this exemption.

However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

Question 12: What is the applicability of the FMCSRs to school bus operations performed by Indian Tribal Governments?

Guidance: Transportation performed by the Federal Government, States, or political subdivisions of a State is generally excepted from the FMCSRs. This general exception includes Indian Tribal Governments, which for purposes of § 390.3(f) are equivalent to a State governmental entity. When a driver is employed and a bus is operated by the governmental entity, the operation would not be subject to the FMCSRs, with the following exceptions: The requirements of part 383 as they pertain to commercial driver licensing standards are applicable to every driver operating a CMV, and the accident report retention requirements of part 390 are applicable when the governmental entity is performing interstate charter transportation of passengers.

Question 13: A motor carrier dispatches an empty CMV from State A into adjoining State B in order to transport cargo or passengers between two points in State B, and then to return empty to State A. Does the transportation of cargo or passengers within State B constitute interstate commerce?

Guidance: Yes. The courts and the ICC developed a test that clarifies the legal status of intrastate portions of interstate trips. The character of the intrastate leg depends on the shipper's fixed and persistent intent when the transportation began. The fixed and persistent intent in this case was to move property—the vehicle itself—across State lines and between two points in State B where it was used to haul cargo or passengers. The transportation within State B, therefore, constitutes interstate commerce. In some cases the motor carrier may be the shipper.

Question 14: What is the applicability of the FMCSRs to motor carriers owning and operating school buses that contract with a municipality to provide pupil transportation services?

Guidance: For the purposes of the FMCSRs, parts 390–399, ''school bus operation'' means the use of a school bus to transport school children and/or school personnel from home to school and from school to home. A ''school bus'' is a passenger motor vehicle

designed to carry more than 10 passengers in addition to the driver, and used primarily for school bus operations (see § 390.5). School bus operations and transportation performed by government entities are specifically exempted from the FMCSRs under § 390.3(f).

However, anyone operating school buses under contract with a school is a for-hire motor carrier. When a nongovernment, for-hire motor carrier transports children to school-related functions other than ''school bus operation'' such as sporting events, class trips, etc., and operates across State lines, its operation must be conducted in accordance with the FMCSRs. This applies to motor carriers that operate CMVs as defined under part 390 which includes vehicles which have a GVWR of 10,001 pounds or more or are designed or used to carry passengers for compensation, except 6-passenger taxicabs not operating on fixed routes.

In certain instances, carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act. Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387. Therefore, school bus contractors must comply with the FMCSRs for interstate trips such as sporting events and class trips but are not required by Federal regulations to carry a specific level of insurance coverage.

For those operations provided by school bus contractors that are subject to the FMCSRs, the motor carriers must keep driver and vehicle records as required by the regulations. This would include driver qualifications records (part 391), driver records of duty status (part 395), accident report retention (part 390), and inspection, repair, and maintenance records (part 396) for the drivers and vehicles that are used on the trips that are subject to the FMCSRs. These records are not required under the FMCSRs for the other vehicles in the motor carrier's fleet that are not subject to the regulations.

Question 15: May drivers be coerced into employing loading or unloading assistance (lumpers)?

Guidance: No. The Motor Carrier Act of 1980 made it illegal to coerce someone into unwanted loading or unloading and require payment for it (49 U.S.C. 14103, previously 49 U.S.C. 11109). The FHWA is responsible for the enforcement of regulations forbidding coercion in the use of lumpers.

Question 16: a. Are vehicles which, in the course of interstate transportation over the highway, are off the highway, loading, unloading or waiting, subject to the FMCSRs during these times?

b. Are vehicles and drivers used wholly within terminals and on premises or plant sites subject to the FMCSRs?

Guidance:

a. Yes.

b. No.

Question 17: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the STAA (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

Question 18: Are persons who operate CMVs for the personal conveyance of their friends or family members ''private motor carriers of passengers (nonbusiness)'' as defined in § 390.5?

Guidance: No. Nonbusiness private motor carriers of passengers (PMCPs) *do not* include individuals providing personal conveyance of passengers for recreational purposes. A nonbusiness PMCP must be engaged in some group activity. For example, organizations that are exempt under the Internal Revenue Code (26 U.S.C. 501) and provide transportation for their members would generally be considered nonbusiness PMCPs: Religious, charitable, scientific, and educational organizations, scouting groups, sports clubs, fraternal societies or lodges, etc.

Question 19: ''Unless otherwise specifically provided,'' § 390.3(f)(2) exempts certain government entities and their drivers from compliance with 49 CFR Chapter III, Subchapter B, i.e., parts 350–399. Which parts are covered by this exemption and which are ''otherwise specifically'' excluded?

Guidance: Government employers and drivers are exempt from compliance with parts 325, 385, 387, and 390–399. However, they must comply with the drug and alcohol testing requirements in part 382 and the CDL requirements in part 383. Parts 350, 355, 384, 386, 388, and 389 do not directly regulate CMV operators, public or private, and the question of an exemption therefore does not arise.

Question 20: Do the FMCSRs apply to Indian Tribal Governments?

Guidance: Under § 390.3(f)(2), transportation performed by the Federal Government, States, or political subdivisions of a State is generally exempt from the FMCSRs. Indian Tribal Governments are considered equivalent to a State governmental entity for purposes of this exemption. Thus, when a driver is employed by and is operating a CMV owned by a governmental entity, neither the driver, the vehicle, nor the entity is subject to the FMCSRs, with the following exceptions:

(1) The requirements of part 383 relating to CMV driver licensing standards;

(2) The drug testing requirements in part 382;

(3) Alcohol testing when an employee is performing, about to perform, or just performed safety-sensitive functions. For the purposes of alcohol testing, safety-sensitive functions are defined in § 382.107 as any of those on-duty functions set forth in § 395.2 On-Duty time, paragraphs (1) through (6), (generally, driving and related activities) and;

(4) The accident report retention requirements of § 390.15 are applicable when the governmental entity is performing interstate charter transportation of passengers.

Question 21: Does the exemption in § 390.3(f)(3) for the ''occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise'' apply to persons who occasionally use CMVs to transport cars, boats, horses, etc., to races, tournaments, shows or similar events, even if prize money is offered at these events?

Guidance: The exemption would apply to this kind of transportation, provided: (1) The underlying activities are not undertaken for profit, i.e., (a) prize money is declared as ordinary income for tax purposes, and (b) the cost of the underlying activities is not deducted as a business expense for tax purposes; and, where relevant; (2) corporate sponsorship is not involved. Drivers must confer with their State of licensure to determine the licensing provisions to which they are subject.

Question 22: If, after December 18, 1995, a Mexico-based driver is found operating beyond the boundaries of the four border States allowed by the North American Free Trade Agreement (NAFTA), is that driver in violation of the FMCSRs? If so, which one?

Guidance: No. Driving beyond the four border States is not, in and of itself, a violation of the FMCSRs.

Question 23: Is transportation within the boundaries of a State between a place in an Indian Reservation and a place outside such reservation interstate commerce?

Guidance: No, such transportation is considered to be intrastate commerce. An Indian reservation is geographically located within the area of a State. Enforcement on Indian reservations is inherently Federal, unless such authority has been granted to the States by Congressional enactment, accepted by the States where appropriate, and consented to by the Indian tribes.

Question 24: To what extent does the FHWA have jurisdiction to regulate the qualifications and hours of service of CMV drivers engaged in interstate or foreign commerce if the drivers only occasionally operate in interstate or foreign commerce?

Guidance: The FHWA published an interpretation in the **Federal Register** on July 23, 1981 (46 FR 37902) on this subject. The FHWA must show that the driver or motor carrier has engaged in interstate or foreign commerce within a reasonable period of time prior to its assertion of jurisdiction under 49 U.S.C. 31136 and 31502.

The FHWA must show that the driver or motor carrier has actually operated in interstate commerce within a reasonable period of time prior to its assertion of jurisdiction. Mere solicitation of business that would involve operations in interstate commerce is not sufficient to establish jurisdiction. If jurisdiction is claimed over a driver who has not driven in interstate commerce, evidence must be presented that the carrier has operated in interstate commerce and that the driver could reasonably be expected to make one of the carrier's interstate runs. Satisfactory evidence would include, but not be limited to, statements from drivers and carriers and any employment agreements.

Evidence of driving or being available for use in interstate commerce makes the driver subject to the FMCSRs for a 4-month period from the date of the proof. For that period, the motor carrier is also required to comply with those portions of the FMCSRs that deal with drivers, driving, and records related to or generated by drivers, primarily those in 49 CFR parts 387, 391, 392, 395 and 396. The FHWA believes that the 4-month period is reasonable because it avoids both a week-by-week determination of jurisdiction, which is excessively narrow, and the assertion that a driver who is used or available for use once remains subject to the FMCSRs for an unlimited time, which is overly inclusive.

Section 390.5 Definitions

Question 1: Do the definitions of ''farm,'' ''farmer'' and ''agricultural crops'' apply to greenhouse operations?

Guidance: Yes.

Question 2: Is a vehicle used to transport or tow anhydrous ammonia nurse tanks considered a CMV and subject to FMCSRs?

Guidance: Yes, provided the vehicle's GVWR or GCWR meets or exceeds that of a CMV as defined in § 390.5 and/or the vehicle transports HM in a quantity that requires placarding.

Question 3: If a vehicle's GVWR plate and/or VIN number are missing but its actual gross weight is 10,001 pounds or more, may an enforcement officer use the latter instead of GVWR to determine the applicability of the FMCSRs?

Guidance: Yes. The only apparent reason to remove the manufacturer's GVWR plate or VIN number is to make it impossible for roadside enforcement officers to determine the applicability of the FMCSRs, which have a GVWR threshold of 10,001 pounds. In order to frustrate willful evasion of safety regulations, an officer may therefore presume that a vehicle which does not have a manufacturer's GVWR plate and/or does not have a VIN number has a GVWR of 10,001 pounds or more if: (1) It has a size and configuration normally associated with vehicles that have a GVWR of 10,001 pounds or more; and (2) It has an actual gross weight of 10,001 pounds or more.

A motor carrier or driver may rebut the presumption by providing the enforcement officer the GVWR plate, the VIN number or other information of comparable reliability which demonstrates, or allows the officer to determine, that the GVWR of the vehicle is below the jurisdictional weight threshold.

Question 4: If a vehicle with a manufacturer's GVWR of less than 10,001 pounds has been structurally modified to carry a heavier load, may an enforcement officer use the higher actual gross weight of the vehicle, instead of the GVWR, to determine the applicability of the FMCSRs?

Guidance: Yes. The motor carrier's intent to increase the weight rating is shown by the structural modifications. When the vehicle is used to perform functions normally performed by a vehicle with a higher GVWR, § 390.33 allows an enforcement officer to treat the actual gross weight as the GVWR of the modified vehicle.

Question 5: A driver used by a motor carrier operates a CMV to and from his/her residence out of State. Is this considered interstate commerce?

Guidance: If the driver is operating a CMV at the direction of the motor carrier, it is considered interstate commerce and is subject to the FMCSRs. If the motor carrier is allowing the driver to use the vehicle for private personal transportation, such transportation is not subject to the FMCSRs.

Question 6: Is transporting an empty CMV across State lines for purposes of repair and maintenance considered interstate commerce?

Guidance: Yes. The FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the empty CMV.

Question 7: Does off-road motorized construction equipment meet the definitions of ''motor vehicle'' and ''commercial motor vehicle'' as used in §§ 383.5 and 390.5?

Guidance: No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites: and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question 8: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

Question 9: Are mobile cranes operating in interstate commerce subject to the FMCSRs?

Guidance: Yes, the definition of CMV encompasses mobile cranes.

Question 10: Does the FHWA define for-hire transportation of passengers the same as the former ICC did?

Guidance: To the extent FHWA's authority stems from 49 U.S.C. 31502 or other sections of Title 49 which are rooted in the Interstate Commerce Act, the FHWA is bound by judicial precedent and legislative history in interpreting that Act, much of which relates to the operations of the former ICC. However, since the MCSA of 1984 re-established the FHWA's jurisdictional authority and resulted in a re-promulgation of the FMCSRs, the FHWA has been establishing its own precedents based on ''safety'' rather than ''economics'' as the overriding consideration. This has resulted in some deviation in the definition of terms by the two agencies, e.g., commercial zones, for-hire transportation, etc.

The term ''for-hire motor carrier'' as defined in part 390 means a person engaged in the transportation of goods or passengers for compensation. The FHWA has determined that any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

Question 11: A company has a truck with a GVWR under 10,001 pounds towing a trailer with a GVWR under 10,001 pounds. However, the GVWR of the truck added to the GVWR of the trailer is greater than 10,001 pounds. Would the company operating this vehicle in interstate commerce have to comply with the FMCSRs?

Guidance: Section 390.5 of the FMCSRs includes in the definition of CMV a vehicle with a GVWR or GCWR of 10,001 or more pounds. The section further defines GCWR as the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. Therefore, if the GVWR of the truck added to the GVWR of the trailer exceeds 10,001 pounds, the driver and vehicle are subject to the FMCSRs.

Question 12: A CMV becomes stuck in a median or on a shoulder, and has had no contact with another vehicle, a pedestrian, or a fixed object prior to becoming stuck. If a tow truck is used to pull the CMV back onto the traveled portion of the road, would this be considered an accident?

Guidance: No.

Question 13: To what extent would the windshield and/or mirrors of a vehicle have to be damaged in order for it to be considered ''disabling damage'' as used in the definition of an accident in § 390.5?

Guidance: The decision as to whether damage to a windshield and/or mirrors is disabling is left to the discretion of the investigating officer.

Question 14: Is the tillerman who controls the steerable rear axle of a vehicle so equipped a driver subject to the FMCSRs while operating in interstate commerce?

Guidance: Yes. Although the tillerman does not control the vehicle's speed or braking, the rear-axle steering he/she performs is essential to prevent the trailer from offtracking into other lanes or vehicles or off the highway entirely. Because this function is critical to the safe operation of vehicles with steerable rear axles, the tillerman is a driver.

Question 15: Does the definition of a ''commercial motor vehicle'' in § 390.5 of the FMCSRs include parking lot and/or street sweeping vehicles?

Guidance: If the GVWR of a parking lot or street sweeping vehicle is 10,001 or more pounds, and it operates in interstate commerce, it is a CMV.

Question 16: Does a driver leasing company that hires, assigns, trains, and/or supervises drivers for a private or for-hire motor carrier become a motor carrier as defined by 49 CFR 390.5?

Guidance: No.

Question 17: May a motor carrier that employs owner-operators who have their own operating authority issued by the ICC or the Surface Transportation Board transfer the responsibility for compliance with the FMCSRs to the owner-operators?

Guidance: No. The term ''employee,'' as defined in § 390.5, specifically includes an independent contractor employed by a motor carrier. The existence of operating authority has no bearing upon the issue. The motor carrier is, therefore, responsible for compliance with the FMCSRs by its driver employees, including those who are owner-operators.

Question 18: Must a person who is injured in an accident and immediately receives treatment away from the scene of the accident be transported in an ambulance?

Guidance: No. Any type of vehicle may be used to transport an injured person from the accident scene to the treatment site.

Question 19: What is the meaning of ''immediate'' as used in the definition of ''accident?''

Guidance: The term ''immediate'' means without an unreasonable delay. A person immediately receives medical treatment if he or she is transported directly from the scene of an accident to a hospital or other medical facility as soon as it is considered safe and feasible to move the injured person away from the scene of the accident.

Question 20: A person involved in an incident discovers that he or she is injured after leaving the scene of the incident and receives medical attention at that time. Does the incident meet the definition of accident in 49 CFR 390.5?

Guidance: No. The incident does not meet the definition of accident in 49 CFR 390.5 because the person did not receive treatment immediately after the incident.

Question 21: Do electronic devices which are advertised as radar jammers meet the definition of a radar detector in 49 CFR 390.5?

Guidance: Devices that are said to reflect incoming energy passively or to transmit steadily on the same frequency as police radar units are not radar detectors because they do not detect radio microwaves. Devices that are said to detect and isolate the incoming signal and then to transmit on the same frequency to interfere with the police unit would qualify as radar detectors.

Question 22: Is a motor vehicle drawing a non-self-propelled mobile home that has one or more set of wheels on the roadway, a driveaway-towaway operation?

Guidance: Yes, if the mobile home is a commodity. For example, the mobile home is transported from the manufacturer to the dealer or from the dealer or other seller to the buyer.

Question 23: Can a truck tractor drawing a trailer be a driveaway-towaway operation?

Guidance: Yes, if the trailer is a commodity. For example, the trailer is transported from the manufacturer to the dealer or from the dealer or other seller to the buyer.

Question 24: Are trailers which are stacked upon each other and drawn by a motor vehicle by attachment to the bottom trailer, a driveaway-towaway operation.

Guidance: No. Only the bottom trailer has one or more sets of wheels on the roadway. The other trailers are cargo.

Question 25: The definition of a passenger CMV is a vehicle ''designed to transport'' more than 15 passengers, including the driver. Does that include standing passengers if the vehicle was

specifically designed to accommodate standees?

Guidance: No. ''Designed to transport'' refers only to the number of designated seats; it does not include areas suitable, or even designed, for standing passengers.

Question 26: What is considered a ''public road''?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

Section 390.9 State and Local Laws, Effect on

Question 1: If an interstate driver gets stopped by a State enforcement officer for an inspection, would the inspecting officer be enforcing the Federal regulations or State regulations?

Guidance: A State enforcement officer can only enforce State laws. However, under the Motor Carrier Safety Assistance Program, quite often State laws are the same as or similar to the FMCSRs.

Section 390.15 Assistance in Investigations and Special Studies

Question 1: May a motor carrier create an accident register of its own, or is there a specified form that must be used?

Guidance: There is no specified form. A motor carrier may create or use any accident register as long as it includes the elements required by § 390.15.

Question 2: Would the accident report retention requirement in § 390.15(b)(2) include an ''Adjuster's Report'' that is normally considered to be an internal document of an insurance company?

Guidance: No. The intent of § 390.15(b)(2) is that motor carriers maintain copies of all documents which the motor carrier is required by the insurance company to complete and/or maintain. Section 390.15(b)(2) does not require motor carriers to maintain documents, such as ''Adjuster's Reports,'' that are typically internal documents of the insurance company.

Question 3: What types of documents must a motor carrier retain to support its accident register and be in compliance with § 390.15(b)?

Guidance: The documents required by § 390.15(b)(2) include all information about a particular accident generated by a motor carrier or driver to fulfill its accident reporting obligations to State or other governmental entities or that motor carrier's insurer. The language of paragraph (b)(2) does not require a motor carrier to seek out, obtain, and retain copies of accident reports prepared by State investigators or insurers.

Section 390.21 Marking of Commercial Motor Vehicles

Question 1: What markings must be displayed on a CMV when used by two or more motor carriers?

Guidance: The markings of the motor carrier responsible for the operation of the CMV must be displayed at the time of transportation. If 2 or more names are on the vehicle, the name of the operating motor carrier must be preceded by the words ''operated by.''

Section 390.23 Relief From Hours-of-service Regulations—Disasters

Question 1: Does § 390.23 create an exemption from the FMCSRs each and every time the delivery of electricity is interrupted, no matter how isolated or minor the occurrence?

Guidance: The rule creates an exemption from the FMCSRs when interruptions of electricity are severe enough to trigger a declaration of an emergency by a public official authorized to do so.

An interruption of electricity that does not produce a declaration by a public official is not an emergency for purposes of the regulation and does not exempt a motor carrier or driver from the FMCSRs. A call reporting a downed power line, whether directed to the State police or a public utility company, does not create a declared emergency.

The authority to declare emergencies has been delegated to different officials in the various States. The FHWA has not attempted to list these officials. In order to utilize the exemption provided by § 390.23, drivers and motor carriers must therefore ascertain that a declaration of an emergency was made by a State or local official authorized to do so.

Question 2: Section 390.23(a) provides that parts 390 through 399 do not apply to any motor carrier or driver operating a CMV to provide direct assistance in an emergency. Is a motor carrier or driver required to keep a record of the driver's on-duty or driving time while providing relief?

Guidance: No.

Question 3: After providing emergency relief under § 390.23, what on-duty hours must a driver use to determine how much off-duty time he/she must have before returning to the service of the employing motor carrier?

Guidance: The driver must total the number of hours worked while the driver actually provided direct assistance to the emergency relief effort.

Section 390.31 Copies of Records or Documents

Question 1: May records required by the FMCSRs be maintained in an electronic format?

Guidance: Yes, provided the motor carrier can produce the information required by the regulations. Documents requiring a signature must be capable of replication (i.e., photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand. If computer records are used, all of the relevant data on the original documents must be included in order for the record to be valid.

Question 2: How long does a motor carrier have to produce records if a motor carrier maintains all records in an electronic format?

Guidance: A motor carrier must produce all records maintained in an electronic format within 2 working days after the request. Documents requiring a signature must be capable of replication (e.g., photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand.

Special Topics—Serious Pattern of Violations

Question 1: What constitutes a ''serious pattern'' of violations?

Guidance: A serious pattern constitutes violations that are both widespread and continuing over a period of time. A serious pattern is more than isolated violations. A serious pattern does not require a specific number of violations.

PART 391—QUALIFICATION OF DRIVERS

Sections Interpreted

Section 391.2 General Exemptions

Question 1: Must exempt intracity zone (see § 390.5) drivers comply with the medical requirements of this subpart?

Guidance: No, provided: a. the driver was otherwise qualified and operating in a municipality or exempt intracity zone thereof throughout the 1-year period ending November 18, 1988; and,

b. the driver's medical condition has not substantially worsened since August 23, 1988.

Question 2: What driver qualification requirements must a farm vehicle driver (as defined in § 390.5) comply with in part 391?

Guidance: Drivers meeting the definition of ''farm vehicle driver'' who operate straight trucks are exempted from all driver qualification requirements of part 391. All drivers of articulated motor vehicles with a GCWR of 10,001 pounds or more are required to possess a current medical certificate as required in §§ 391.41 and 391.45.

Section 391.11 Qualifications of Drivers

Question 1: Is there a maximum age limit for driving in interstate commerce?

Guidance: The FMCSRs do not specify any maximum age limit for drivers.

Question 2: Does the age requirement in § 391.11(b)(1) apply to CMV drivers involved entirely in intrastate commerce?

Guidance: No. Neither the CDL requirements in part 383 nor the FMCSRs in parts 390–399 require drivers engaged purely in intrastate commerce to be 21 years old. The States may set lower age thresholds for intrastate drivers.

Question 3: What effect does the Age Discrimination in Employment Act have on the minimum age requirement for an interstate driver?

Guidance: None. The Age Discrimination in Employment Act, 29 U.S.C. 621–634, recognizes an exception when age is a bona fide occupational qualification. 29 U.S.C. 623(f)(1).

Question 4: May a motor carrier be exempt from driver qualification requirements by hiring a driver leasing company or temporary help service?

Guidance: No. The FMCSRs apply to, and impose responsibilities on, motor carriers and their drivers. The FHWA does not regulate driver leasing companies or temporary help service companies.

Question 5: May a motor carrier lawfully permit a person not yet qualified as a driver in accordance with § 391.11 to operate a vehicle in interstate commerce for the purpose of attending a training and indoctrination course in the operation of that specific vehicle?

Guidance: No. If the trip is in interstate commerce, the driver must be fully qualified to operate a CMV.

Question 6: Does the Military Selective Service Act of 1967 require a motor carrier to place a returning veteran in his/her previous position (driving interstate) even though he/she fails to meet minimum physical standards?

Guidance: No. The Act does not require a motor carrier to place a returning veteran who does not meet the minimum physical standards into his/her previous driving position. The returning veteran must meet the physical requirements and obtain a medical examiner's certificate before driving in interstate operations.

Section 391.15 Disqualification of Drivers

Question 1: May a driver convicted of a disqualifying offense be ''disqualified'' by a motor carrier?

Guidance: No. Motor carriers have no authority to disqualify drivers. However, a conviction for a disqualifying offense automatically disqualifies a driver from driving for the period specified in the regulations. Thus, so long as a motor carrier knows, or should have known, of a driver's conviction for a disqualifying offense, it is prohibited from using the driver during the disqualification period.

Question 2: Is a decision of probation before judgment sufficient for disqualification?

Guidance: Yes, provided the State process includes a finding of guilt.

Question 3: Is a driver holding a valid driver's license from his or her home State but whose privilege to drive in another State has been suspended or revoked, disqualified from driving by § 391.15(b)?

Guidance: Yes, the driver would be disqualified from interstate operations until his privileges are restored by the authority that suspended or revoked them, provided the suspension resulted from a driving violation. It is immaterial that he holds a valid license from another State. All licensing actions should be accomplished through the CDLIS or the controlling interstate compact.

Question 4: What are the differences between the disqualification provisions listed in §§ 383.51 and 383.5 and those listed in § 391.15?

Guidance: Part 383 disqualifications are applicable generally to drivers who drive CMVs above 26,000 pounds GVWR, regardless of where the CMV is driven in the U.S. Part 391 disqualifications are applicable generally to drivers who drive CMVs above 10,000 pounds GVWR, only when the vehicle is used in interstate commerce in a State, including the District of Columbia.

Question 5: Do the disqualification provisions of § 391.15 apply to offenses committed by a driver who is using a company vehicle for personal reasons while off-duty?

Guidance: No. For example, an owner-operator using his own vehicle in an off-duty status, or a driver using a company truck, or tractor for transportation to a motel, restaurant or home, would be outside the scope of this section if he returns to the same terminal from which he went off-duty (see § 383.51 for additional information).

Question 6: If a driver has his/her privileges to drive a pleasure vehicle revoked or suspended by State authorities, but his/her privileges to operate a CMV are left intact, would the driver be disqualified under the terms set forth in § 391.15?

Guidance: No. The driver would not be disqualified from operating a CMV.

Question 7: If a driver is convicted of one of the specified offenses in § 391.15(c), but is allowed to retain his driver's license, is he/she still disqualified?

Guidance: Yes. A driver who is convicted of one of the specified offenses in § 391.15(c), or has forfeited bond in collateral on account of one of these offenses, and who is allowed to retain his/her driver's license, is still disqualified. The loss of a driver's license and convictions of certain offenses in § 391.15(c) are entirely separate grounds for disqualification.

Question 8: If a driver has his/her license suspended for driving while under the influence of alcohol, and 2 months later, as a result of this same incident, the driver is convicted of a DWI, must the periods of disqualification be combined since these are both disqualifying offenses?

Guidance: No. Disqualification during the suspension of an operating license continues until the license is restored by the jurisdiction that suspended it. Disqualification for conviction of DWI is for a fixed term. The fact that the driver was already disqualified for driving under the influence of alcohol because of the suspension action may mean that the total time under disqualification for the DWI conviction may exceed the stated term.

Question 9: If a driver commits a felony while operating a CMV but not in the employ of a motor carrier, is the offense disqualifying?

Guidance: No. There are 2 conditions required to be present for a felony conviction to be a disqualifying offense

under § 391.15: (1) The offense was committed during on-duty time; and (2) the driver was employed by a motor carrier or was engaged in activities that were in furtherance of a commercial enterprise. However, neither of these conditions is a prerequisite for a disqualifying offense under § 383.51.

Section 391.21 Application for Employment

Question 1: If a driver submits an application for employment and has someone else type, write, or print the answers to the questions for him and he signs the application, does this constitute a valid application?

Guidance: Yes. The applicant, by signing the application, certifies that all entries on it and information therein are true and complete to the best of the applicant's knowledge.

Question 2: Is there a prescribed or specified form that must be used when a driver applies for employment, or can a carrier develop its own application?

Guidance: There is no specified form to be used in an application for employment. Carriers may develop their own forms, which may be tailored to their specific needs. The application form must, at the minimum, contain the information specified in § 391.21(b).

Question 3: Section 391.21(b)(11) requires that an application for employment contain 10 years of prior employment information on the driver. If a foreign motor carrier's home country requires that an application for employment contain only five years of data, will a foreign carrier need to change its application to collect 10 years of data? Will the foreign carrier be required to go back and collect 10 years of data on its current drivers? What will a U.S. motor carrier who employs foreign drivers be required to do in this regard?

Guidance: A foreign motor carrier would not be required to collect 10 years of prior employment information as long as a foreign driver has an appropriate foreign commercial driver's license, i.e., (1) the Licencia Federal de Conductor (Mexico), or (2) the Canadian National Safety Code commercial driver's license. A U.S. motor carrier, on the other hand, would be required to collect 10 years of prior employment information when hiring foreign drivers. The carrier should also remember to contact the U.S. Immigration and Naturalization Service for their regulations and policies with respect to hiring foreign drivers.

Section 391.23 Investigation and Inquiries

Question 1: When a motor carrier receives a request for driver information from another motor carrier about a former or current driver, is it required to supply the requested information?

Guidance: Generally no. See § 382.405, however, for requests pertaining to drug and alcohol records.

Section 391.25 Annual Review of Driving Record

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of § 391.25?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether or not they are part of an official record maintained by a State, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are such indications and must be considered. A violation of size and weight laws should also be considered.

Question 2: Is a driver service or leasing company that is not a motor carrier permitted to perform annual reviews of driving records (§ 391.25) on the drivers it furnishes to motor carriers?

Guidance: The driver service or leasing company may perform annual reviews if designated by a motor carrier to do so.

Section 391.27 Record of Violations

Question 1: Are notifications to a motor carrier by a driver convicted of a driver violation as required by § 383.31 to be maintained in the driver's qualification file as part of the supporting documentation or certifications noted in the requirements listed in § 391.27(d)?

Guidance: Section 391.27(d) does not require documentation in the qualification file. However, § 391.51 does require that such notifications be maintained in the qualification file.

Section 391.31 Road Test

Question 1: Are employers still required to administer road tests since all States have implemented CDL skills testing?

Guidance: The employer may accept a CDL in lieu of a road test if the driver is required to successfully complete a road test to obtain a CDL in the State of issuance. However, if the employer intends to assign to the driver a vehicle necessitating the doubles/triples or tank vehicle endorsement, the employer must administer the road test under § 391.31 in a representative vehicle.

Question 2: How does a student enrolled in a driver training school comply with the requirement to pass a road test?

Guidance: The road test is administered only after the student has demonstrated a sufficient degree of proficiency on a range or off-road course. A student who passes the road test and is qualified to operate in interstate commerce could cross a State line in the process of receiving training.

Question 3: May a carrier use a blanket certification of road test for specific vehicles (driver's names, etc., left out)?

Guidance: No.

Question 4: May a motor carrier designate another person or organization to administer the road test?

Guidance: Yes. A motor carrier may designate another person or organization to administer the road test as long as the person who administers the road test is competent to evaluate and determine the results of the tests.

Section 391.41 Physical Qualifications for Drivers

Question 1: Who is responsible for ensuring that medical certifications meet the requirements?

Guidance: Medical certification determinations are the responsibility of the medical examiner. The motor carrier has the responsibility to ensure that the medical examiner is informed of the minimum medical requirements and the characteristics of the work to be performed. The motor carrier is also responsible for ensuring that only medically qualified drivers are operating CMVs in interstate commerce.

Question 2: Do the physical qualification requirements of the FMCSRs infringe upon a person's religious beliefs if such beliefs prohibit being examined by a licensed doctor of medicine or osteopathy?

Guidance: No. To determine whether a governmental regulation infringes on a person's right to freely practice his religion, the interest served by the regulation must be balanced against the degree to which a person's rights are adversely affected. *Biklen v. Board of Education*, 333 F. Supp. 902 (N.D.N.Y. 1971) aff'd 406 U.S. 951 (1972).

If there is an important objective being promoted by the requirement and the restriction on religious freedom is reasonably adapted to achieving that objective, the requirement should be upheld. *Burgin v. Henderson*, 536 F.2d 501 (2d. Cir. 1976).

Based on the tests developed by the courts and the important objective served, the regulation meets Constitutional standards. It does not deny a driver his First Amendment rights.

Question 3: What are the physical qualification requirements for operating a CMV in interstate commerce?

Guidance: The physical qualification regulations for drivers in interstate commerce are found at § 391.41. Instructions to medical examiners performing physical examinations of these drivers are found at § 391.43. Interpretive guidelines are distributed upon request.

The qualification standards cover 13 areas which directly relate to the driving function. All but four of the standards require a judgement by the medical examiner. A person's qualification to drive is determined by a medical examiner who is knowledgeable about the driver's functions and whether a particular condition would interfere with the driver's ability to operate a CMV safely. In the case of vision, hearing, insulin-using diabetes, and epilepsy, the current standards are absolute, providing no discretion to the medical examiner.

Question 4: Is a driver who is taking prescription methadone qualified to drive a CMV in interstate commerce?

Guidance: Methadone is a habit-forming narcotic which can produce drug dependence and is not an allowable drug for operators of CMVs.

Question 5: May the medical examiner restrict a driver's duties?

Guidance: No. The only conditions a medical examiner may impose upon a driver otherwise qualified involve the use of corrective lenses or hearing aids, securement of a waiver or limitation of driving to exempt intracity zones (see § 391.43(g)). A medical examiner who believes a driver has a condition not specified in § 391.41 that would affect his ability to operate a CMV safely should refuse to sign the examiner's certificate.

Question 6: If an interstate driver tests positive for alcohol or controlled substances under part 382, must the driver be medically re-examined and obtain a new medical examiner's certificate to drive again?

Guidance: The driver is not required to be medically re-examined or to obtain a new medical examiner's certificate *provided* the driver is seen by an SAP who evaluates the driver, does not make a clinical diagnosis of alcoholism, and provides the driver with documentation allowing the driver to return to work. However, if the SAP determines that alcoholism exists, the driver is not qualified to drive a CMV in interstate commerce. The ultimate responsibility rests with the motor carrier to ensure the driver is medically qualified and to determine whether a new medical examination should be completed.

Question 7: Are drivers prohibited from using CB radios and earphones?

Guidance: No. CB radios and earphones are not prohibited under the regulations, as long as they do not distract the driver and the driver is capable of complying with § 391.41(b)(11).

Question 8: Is the use of coumadin, an anticoagulant, an automatic disqualification for drivers operating CMVs in interstate commerce?

Guidance: No. Although the FHWA 1987 ''Conference on Cardiac Disorders and Commercial Drivers'' recommended that drivers who are taking anticoagulants not be allowed to drive, the agency has not adopted a rule to that effect. The medical examiner and treating specialist may, but are not required to, accept the Conference recommendations. Therefore, the use of coumadin is not an automatic disqualification, but a factor to be considered in determining the driver's physical qualification status.

Section 391.43 Medical Examination; Certificate of Physical Examination

Question 1: May a motor carrier, for the purposes of § 391.41, or a State driver licensing agency, for the purposes of § 383.71, accept the results of a medical examination performed by a foreign medical examiner?

Guidance: Yes. Foreign drivers operating in the U.S. with a driver's license recognized as equivalent to the CDL may be medically certified in accordance with the requirements of part 391, subpart E, by a medical examiner in the driver's home country who is licensed, certified, and/or registered to perform physical examinations in that country. *However,* U.S. drivers operating in interstate commerce within the U.S. must be medically certified in accordance with part 391, subpart E, by a medical examiner licensed, certified, and/or registered to perform physical examinations in the U.S.

Question 2: May a urine sample collected for purposes of performing a subpart H test be used to test for diabetes as part of a driver's FHWA-required physical examination?

Guidance: In general, no. However, the DOT has recognized an exception to this general policy whereby, after 60 milliliters of urine have been set aside for subpart H testing, any remaining portion of the sample may be used for other nondrug testing, but only if such other nondrug testing is required by the FHWA (under part 391, subpart E) such as testing for glucose and protein levels.

Question 3: Is a chest x-ray required under the minimum medical requirements of the FMCSRs?

Guidance: No, but a medical examiner may take an x-ray if appropriate.

Question 4: Does § 391.43 of the FMCSRs require that physical examinations of applicants for employment be conducted by medical examiners employed by or designated by the carrier?

Guidance: No.

Question 5: Does a medical certificate displaying a facsimile of a medical examiner's signature meet the ''signature of examining health care professional'' requirement?

Guidance: Yes.

Question 6: The driver's medical exam is part of the Mexican Licencia Federal. If a roadside inspection reveals that a Mexico-based driver has not had the medical portion of the Licencia Federal re-validated, is the driver considered to be without a valid medical certificate or without a valid license?

Guidance: The Mexican Licencia Federal is issued for a period of 10 years but must be re-validated every 2 years. A condition of re-validation is that the driver must pass a new physical examination. The dates for each re-validation are on the Licencia Federal and must be stamped at the completion of each physical. This constitutes documentation that the driver is medically qualified. Therefore, if the Licencia Federal is not re-validated every 2 years as specified by Mexican law, the driver's license is considered invalid.

Section 391.45 Persons Who Must Be Medically Examined and Certified

Question 1: Is it intended that the words ''person'' and ''driver'' be used interchangeably in § 391.45?

Guidance: Yes.

Question 2: Do the FMCSRs require applicants, possessing a current medical certificate, to undergo a new physical examination as a condition of employment?

Guidance: No. However, if a motor carrier accepts such a currently valid certificate from a driver subject to part 382, the driver is subject to additional controlled substance testing requirements unless otherwise excepted in subpart H.

Question 3: Must a driver who is returning from an illness or injury undergo a medical examination even if

his current medical certificate has not expired?

Guidance: The FMCSRs do not require an examination in this case unless the injury or illness has impaired the driver's ability to perform his/her normal duties. However, the motor carrier may require a driver returning from any illness or injury to take a physical examination. But, in either case, the motor carrier has the obligation to determine if an injury or illness renders the driver medically unqualified.

Section 391.47 Resolution of Conflicts of Medical Evaluation

Question 1: Does the FHWA issue formal medical decisions as to the physical qualifications of drivers on an individual basis?

Guidance: No, except upon request for resolution of a conflict of medical evaluations.

Section 391.49 Waiver of Certain Physical Defects

Question 1: Since 49 CFR 391.49 does not mandate a Skill Performance Evaluation, does the term ''performance standard'' mean that the State must give a driving test or other Skill Performance Evaluation to the driver for every waiver issued or does this term mean that, depending upon the medical condition, the State may give some other type of performance test? For example, in the case of a vision waiver, would a vision examination suffice as a performance standard?

Guidance: Under the Tolerance Guidelines, Appendix C, Paragraph 3(j), each State that creates a waiver program for intrastate drivers is responsible for determining what constitutes ''sound medical judgment,'' as well as determining the performance standard. In the example used above, a vision examination would suffice as a performance standard. It is the responsibility of each State establishing a waiver program to determine what constitutes an appropriate performance standard.

Section 391.51 Driver Qualification Files

Question 1: When a motor carrier purchases another motor carrier, must the drivers of the acquired motor carrier be requalified by the purchasing motor carrier?

Guidance: No.

Question 2: Is a driver training school required to keep a driver qualification file on each student?

Guidance: Yes, if operating in interstate commerce.

Question 3: Before December 23, 1994, motor carriers were required to maintain documentary evidence that their drivers had completed the written examination specified by 49 CFR 391.35 (1994). The rule removing § 391.35 became effective on that date (59 FR 60319, November 23, 1994). Are motor carriers required to maintain such documentary evidence for drivers employed prior to December 23, 1994?

Guidance: No.

Question 4: If a motor carrier maintains complete driver qualification files but cannot produce them at the time of the review or within two business days, is it in violation of § 391.51?

Guidance: Yes. Driver qualification files must be produced on demand. Producing driver qualification files after the completion of the review does not cure a record-keeping violation of § 391.51.

Question 5: Must a driver/employee who was employed prior to the deletion of the section of the FMCSRs requiring certain documentary proof of written examination, and who does not have such proof in his driver qualification file, complete the exam?

Guidance: No. The requirement of former 49 CFR 391.35(h) that a driver qualification file contains certain documents substantiating the driver examination may not be the basis of a citation after November 23, 1994, the date on which all requirements pertinent to a driver's written test were rescinded (59 FR 60319).

Section 391.63 Intermittent, Casual, or Occasional Drivers

Question 1: Is a person employed by a nonmotor carrier in his normal duties considered an intermittent, casual, or occasional driver when employed by a motor carrier as a driver on a part-time basis?

Guidance: No. A person who drives for one motor carrier (even if it is only one day per month) would not meet the definition of an intermittent, casual or occasional driver in § 390.5 since he/she is employed by only one motor carrier. The motor carrier must fully qualify the driver and maintain a qualification file on the employee as a regularly employed driver.

Question 2: How does § 391.63 apply when motor carriers obtain, from a driver leasing service, intermittent, casual, or occasional drivers who are on temporary assignments to multiple motor carriers?

Guidance: If an intermittent, casual, or occasional driver has only been fully qualified by a driver leasing service or similar non-motor carrier entity, and has never been fully qualified by a motor carrier, the first motor carrier employing such a driver must ensure that the driver is fully qualified, and must keep a complete driver qualification file for that driver. It was the intention of §§ 391.63 and 391.65 to require that a driver, before entering the status of an ''intermittent, casual, or occasional'' driver, be fully qualified by a motor carrier. In a contractual relationship between a motor carrier and a driver leasing service, this may be accomplished by a motor carrier designating a driver leasing service as its agent to perform the qualification procedures in accordance with parts 383 and 391. However, in such a case, the motor carrier will be held liable for any violations of the FMCSRs committed by its agent.

Question 3: Must a motor carrier that employs an intermittent, casual, or occasional driver to operate a CMV, as defined in § 383.5, (1) require the driver to prepare and submit an employment application in accordance with § 391.21 and (2) conduct the background investigation of the driver's previous employers required by § 391.23?

Guidance: Section 391.63(a) (1)–(2) exempts from compliance with §§ 391.21 and 391.23 motor carriers that use intermittent, casual or occasional drivers to operate CMVs with a gross vehicle (or combination) weight rating (GVWR/GCWR) of 10,001 pounds or more. These exemptions also apply to carriers operating the heavier CMVs subject to parts 382 and 383.

However, the more limited driver information and motor carrier investigation required by parts 382 and 383 are not covered by § 391.63. Therefore, a carrier using intermittent, casual or occasional drivers to operate CMVs with a GVWR/GCWR of 26,001 pounds or more need not require an employment application in accordance with § 391.21, but the driver must furnish the information required by § 383.35(c). The carrier may conduct a background investigation of the driver's previous employers (§ 383.35(f)), and it must investigate his/her previous alcohol and controlled substance test results (§ 382.413).

Section 391.65 Drivers Furnished by Other Motor Carriers

Question 1: May a nonmotor carrier which owns a CMV prepare the qualification certificate provided for in § 391.65?

Guidance: No, only a motor carrier which regularly employs a driver may issue the required certification.

Question 2: May the certificate of qualification as prescribed by § 391.65

be incorporated into another carrier's forms such as a lease and/or interchange agreement?

Guidance: Yes. However, the certificate of qualification must be signed and dated by an officer or authorized employee of the regularly employing carrier.

Question 3: Is a motor carrier required to accept a certificate from the driver's regularly employing motor carrier certifying that the driver is qualified per § 391.65?

Guidance: No. If the motor carrier chooses not to accept the certificate issued by the regularly employing motor carrier furnishing the driver, the motor carrier must then assume responsibility for assuring itself that the driver is fully qualified in accordance with part 391.

Question 4: If a driver furnished by another motor carrier is in the second carrier's service for a period of 7 consecutive days or more, may the driver still fall under the exemption in § 391.65?

Guidance: No. The driver becomes a regularly employed driver of the second motor carrier and the exemption in § 391.65 is inapplicable.

PART 392—DRIVING OF MOTOR VEHICLES

Sections Interpreted

Section 392.3 Ill or Fatigued Operator

Question 1: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the STAA (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

Section 392.5 Intoxicating Beverage

Question 1: Do possession and use of alcoholic beverages in the passenger area of a motorcoach constitute ''possession'' of such beverages under § 392.5(a)(3)?

Guidance: No.

Question 2: Can a motor carrier, which finds a driver with a detectable presence of alcohol, place him/her out of service in accordance with § 392.5?

Guidance: No. The term ''out of service'' in the context of § 392.5 refers to an act by a State or Federal official. However, the motor carrier must prevent the driver from being on-duty or from operating or being in physical control of a CMV for at least as long as is necessary to prevent a violation of § 392.5.

Question 3: Does the prohibition against carrying alcoholic beverages in § 392.5 apply to a driver who uses a company vehicle, for personal reasons, while off-duty?

Guidance: No. For example, an owner-operator using his/her own vehicle in an off-duty status, or a driver using a company truck or tractor for transportation to a motel, restaurant, or home, would normally be outside the scope of this section.

Question 4: Would an alcohol test, performed by an employer pursuant to 49 CFR part 382, with a result greater than 0.00 BAC, but less than 0.02 BAC, establish that a driver was in violation of 49 CFR 392.5(a)(2), having any measured alcohol concentration while on duty?

Guidance: No. The FHWA believes that a 0.02 BAC is the lowest level at which a scientifically accurate breath/blood alcohol concentration can be measured in an employer-based test under part 382. The FHWA further believes that this use of a 0.02 BAC standard is consistent with FHWA's long established zero tolerance standard for alcohol. This guidance in no way impedes or precludes any action taken by a law enforcement official because of a finding that a BAC level was less than 0.02 BAC.

Section 392.6 Shedules to Conform With Speed Limits.

Question 1: How many miles may a driver record on his/her daily record of duty status and still be presumed to be in compliance with the speed limits?

Guidance: Drivers are required to conform to the posted speed limits prescribed by the jurisdictions in or through which the vehicle is being operated. Where the total trip is on highways with a speed limit of 65 mph, trips of 550–600 miles completed in 10 hours are considered questionable and the motor carrier may be asked to document that such trips can be made. Trips of 600 miles or more will be assumed to be incapable of being completed without violations of the speed limits and may be required to be documented. In areas where a 55 mph speed limit is in effect, trips of 450–500 miles are open to question, and runs of 500 miles or more are considered incapable of being made in compliance with the speed limit and hours of service limitation.

Section 392.7 Equipment, Inspection, and Use

Question 1: Must a driver prepare a written report of a pretrip inspection performed under § 392.7?

Guidance: No.

Question 2: Must both drivers of a team operation comply with the provisions of § 392.7 before driving?

Guidance: Section 392.7 states that a driver must be satisfied that the vehicle is in good working order before operating the vehicle. If a driver is satisfied with a co-driver's inspection, or a safety lane inspection, then the requirement of this section will have been met.

Section 392.9 Safe Loading

Question 1: Is a vehicle's cargo compartment considered sealed according to the terms of § 392.9(b)(4) when it is secured with a padlock, to which the driver holds a key?

Guidance: No. The driver has ready access to the cargo compartment by using the padlock key and would be required to perform the examinations of the cargo and load-securing devices described in § 392.9(b).

Question 2: Does the FHWA have authority to enforce the safe loading requirements against a shipper that is not the motor carrier?

Guidance: No, unless HM as defined in § 172.101 are involved. It is the responsibility of the motor carrier and the driver to ensure that any cargo aboard a vehicle is properly loaded and secured.

Question 3: How may the motor carrier determine safe loading when a shipper has loaded and sealed the trailer?

Guidance: Under these circumstances, a motor carrier may fulfill its responsibilities for proper loading a number of ways. Examples are: a. Arrange for supervision of loading to determine compliance; or

b. Obtain notation on the connecting line freight bill that the lading was properly loaded; or

c. Obtain approval to break the seal to permit inspection.

Question 4: Is there a requirement that a driver must personally load, block, brace, and tie down the cargo on the property carrying CMV he/she drives?

Guidance: No. But the driver is required to be familiar with methods and procedures for securing cargo, and

may have to adjust the cargo or load securing devices pursuant to § 392.9(b).

Section 392.14 Hazardous Conditions; Extreme Caution

Question 1: Who makes the determination, the driver or carrier, that conditions are sufficiently dangerous to warrant discontinuing the operation of a CMV?

Guidance: Under this section, the driver is clearly responsible for the safe operation of the vehicle and the decision to cease operation because of hazardous conditions.

Section 392.16 Use of Seat Belts

Question 1: May a driver be exempted from wearing seat belts because of a medical condition such as claustrophobia?

Guidance: No.

Question 2: Are motorcoach passengers required to wear seat belts?

Guidance: No.

Section 392.42 Notification of License Revocation

Question 1: If a driver's driving privilege is suspended as a result of a violation committed off-duty, in a personal vehicle, is the driver required to notify the employing motor carrier under the provisions of § 392.42?

Guidance: Yes.

Section 392.60 Unauthorized Persons Not To Be Transported

Question 1: Does § 392.60 require a driver to carry a copy of the written authorization (required to transport passengers) on board a CMV?

Guidance: No, the authorization must be maintained at the carrier's principal place of business. At the discretion of the motor carrier, a driver may also carry a copy of the authorization.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Sections Interpreted

393.11 Lighting Devices and Reflectors
393.17 Lamps and Reflectors—Combinations in Driveaway-Towaway Operation
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393.28 Wiring To Be Protected
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393.92 Buses, Marking Emergency Doors
393.93 Seats, Seat Belt Assemblies and Seat Belt Assembly Anchorages
393.95 Emergency Equipment on All Power Units
393.100 General Rules for Protection Against Shifting or Falling Cargo
393.102 Securement Systems
393.106 Front-end Structure
393.201 Frames

Special Topics—CMV Parts and Accessories

Section 393.11 Lighting Devices and Reflectors

Question 1: What is the definition of ''body'' with respect to trucks and trailers?

Guidance: The FMCSRs do not include a definition of ''body.'' However, a truck or trailer body generally means the structure or fixture designed to contain, or support, the material or property to be transported on the vehicle.

Question 2: May retroreflective tape be used in place of side reflex reflectors?

Guidance: Section 393.26(b) cross references FMVSS 108 (49 CFR 571.108, S5.1.1.4) which allows reflective material to be used for side reflex reflectors under the conditions described below. Retroreflective tape conforming to Federal specification L–S–300, ''Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing,'' September 7, 1965, may be used in place of side reflex reflectors if this material as used on the vehicle, meets the performance standards in either Table I or Table IA of Society of Automotive Engineers J594f, *Reflex Reflectors*, January 1977.

Question 3: Section 393.11, Footnote 5, requires that each converter dolly be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle. Are turn signals required on the rear of the converter dolly when the towing of the unladen dolly prevents other motorists from seeing only a portion of the lenses of the turn signals on the towing vehicle?

Guidance: Yes. Although a portion of the rear turn signal lenses on the towing vehicle may be visible to other drivers, the turn signal generally would not satisfy the visibility requirements of FMVSS No. 108 (49 CFR 571.108) if the converter dolly prevents other motorists from seeing the entire lens. The visibility requirements of FMVSS No. 108 help to ensure that other drivers can see the turn signal from a range of positions to the rear of the vehicle. Therefore, turn signals on the towing vehicle are considered to be obscured by the converter dolly if other motorists' view of the lens is even partially blocked.

Question 4: Does a CMV equipped with amber tail lamps in addition to the red tail lamps required to designate the rear of a CMV meet the lighting requirements of § 393.11?

Guidance: No. Section 393.11 requires that lighting devices on CMVs placed in operation after March 7, 1989, meet the requirements of FMVSS No. 108 in effect at the time of manufacture. The NHTSA has issued interpretations which indicate that the use of amber tail lamps impairs the effectiveness of the required lighting equipment and as such is prohibited by FMVSS No. 108 (S5.1.3). Since NHTSA does not allow vehicle manufacturers to install amber tail lamps, the FHWA has concluded that the use of amber tail lamps on vehicles placed in operation after March 7, 1989, is prohibited by § 393.11.

In the case of vehicles placed in operation on or before March 7, 1989, § 393.11 requires that vehicles meet *either* the lighting requirements of part 393 *or* FMVSS No. 108 in effect at the time of manufacture. Prior to the December 7, 1988, final rule on part 393 (53 FR 49397), amber tail lamps were prohibited by § 393.25. Section 393.25(e)(3) (in the October 1, 1988 edition of the Code of Federal Regulations) required all rear lamps, with certain exceptions, to be red. Since tail lamps were not included in the exceptions, the use of amber tail lamps was implicitly prohibited. Therefore, a vehicle placed in operation on or before March 7, 1989, must not be equipped with amber tail lamps because the use of such lamps meets *neither* the lighting requirements of part 393 *nor* FMVSS No. 108 in effect at the time of manufacture.

Section 393.17 Lamps and Reflectors-Combinations in Driveaway-Towaway Operation

Question 1: What are the lighting requirements when a tow truck is pulling a wrecked or disabled vehicle?

Guidance: A wrecker pulling a vehicle would be considered a driveaway-towaway operation and would have to be equipped with the lighting devices specified in § 393.17 when operating in interstate commerce.

Section 393.24 Requirements for Head Lamps and Auxiliary Road Lighting Lamps

Question 1: Must additional lamps that are not required be operative if all required lamps are operative?

Guidance: No.

Section 393.25 Requirements for Lamps Other Than Head Lamps

Question 1: Are lighting devices on mobile homes/house trailers required to be permanently mounted?

Guidance: No. The movement of mobile homes/house trailers is considered to be a driveaway-towaway operation.

Question 2: Are there any special lighting requirements for large containers?

Guidance: No.

Question 3: What are the lighting requirements when a container assumes the structural requirements of a trailer?

Guidance: All relevant requirements of the regulations must be met by this container/trailer.

Section 393.28 Wiring to be Protected

Question 1: Does a frame channel of a CMV constitute a protective ''sheath or tube'' as specified in § 393.28?

Guidance: No. To be acceptable, a sheath or tube must enclose the wires throughout their circumference. In the absence of a sheath or tube, the group of wires must be protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion.

Section 393.31 Overload Protective Devices

Question 1: Must all trailers be equipped with overload protective devices?

Guidance: No. Trailers do not need overload protective devices when protection of trailer circuits is provided on the towing vehicle. A circuit breaker is required only when the head lamp circuit is protected in common with one or more other circuits. A circuit breaker, if required, must be an automatic reset type.

Section 393.40 Required Brake Systems

Question 1: May a system such as ''driveline brakes'' be used as an emergency brake provided it complies with the requirements of § 393.52?

Guidance: Yes. CMVs which were not subject to the emergency brake requirements of FMVSS Nos. 105 or 121 may use ''driveline brakes'' provided those vehicles meet the requirements of § 393.52.

Section 393.41 Parking Brake Systems

Question 1: May the ''park'' position of a CMV's transmission be used as a parking brake to comply with the § 393.41?

Guidance: No. The ''park'' position of the transmission is only a locking device used to lock the transmission.

Question 2: Does § 393.41 prohibit air brake systems from being equipped with a means to release the spring brakes for purposes of towing disabled vehicles in emergency situations?

Guidance: No, provided the brakes are designed and maintained so they cannot be released unless adequate energy is available to make immediate reapplication of the brakes when the brake system is operable.

Question 3: Are parking brakes required on every CMV manufactured before March 7, 1990?

Guidance: No.

Section 393.42 Brakes Required on All Wheels

Question 1: Do retractable or lift axles have to be equipped with brakes?

Guidance: Yes, when the wheels are in contact with the roadway.

Question 2: Are unladen converter dollies covered by the exemption in § 393.42(b)(3)?

Guidance: Yes. However, if the converter dolly is laden, the brakes must be operable.

Question 3: Section 393.42(b)(3) of the FMCSRs states that any full trailer, any semitrailer, or any pole trailer having a GVWR of 3,000 pounds or less must be equipped with brakes if the weight of the towed vehicle resting on the towing vehicle exceeds 40 percent of the GVWR of the towing vehicle. Is the manufacturer of the trailer responsible for ensuring that the trailer is equipped with brakes when required?

Guidance: No. The motor carrier pulling the trailer is responsible for ensuring that the trailer is in compliance with all applicable FMCSRs.

Section 393.43 Breakaway and Emergency Braking System

Question 1: Are tractor protection valves required by § 393.43(b), or may similar devices be used?

Guidance: No. Similar devices may be used provided the devices meet the performance requirements of § 393.43(b).

Question 2: Are all brakes on a trailer required to be applied automatically upon breakaway?

Guidance: Yes.

Section 393.44 Front Brake Lines, Protection

Question 1: Does the term ''rear wheels'' include the tag axle on a bus/motorcoach?

Guidance: Yes. The braking system on a bus/motorcoach must be constructed so that if any brake line to either front wheel is broken, the driver can apply the brakes to all of the wheels on each rear axle.

Section 393.48 Brakes To Be Operative

Question 1: Do surge brakes comply with § 393.48?

Guidance: No. Section 393.48 requires that brakes be operable at all times. Generally, surge brakes are only operative when the vehicle is moving in the forward direction and as such do not comply with § 393.48 (see question number 1 in § 393.49).

Question 2: If a CMV manufactured on or after July 25, 1980 (see § 393.42) has brake components on the front axle, and the brakes are not operable, does the vehicle comply with § 393.48?

Guidance: No.

Question 3: If a truck or truck tractor manufactured prior to July 25, 1980, and having 3 or more axles, has inoperable brakes on the front axle or some of the brake components are missing, would the vehicle be in violation of § 393.48?

Guidance: Yes. Section 393.48(a) requires that all brakes with which the vehicle is equipped must be operable at all times. Although § 393.42(b)(1) provides an exception to the requirement for brakes on all wheels for trucks and truck tractors with 3 or more axles and manufactured prior to July 25, 1980, the exception does not affect the applicability of § 393.48 for those cases in which the vehicle is equipped with inoperable front wheel brakes or only has certain portions of the front wheel brake system (e.g., shoes, linings, chambers, hoses) in place.

Question 4: Are the brakes on a vehicle towed in a driveaway-towaway operation or towed disabled vehicle required to be operable at all times?

Guidance: Section 393.48(c) provides an exception to the requirement that brakes be operable at all times. This exception covers disabled vehicles being towed and vehicles towed in a driveaway-towaway operation.

The driveaway-towaway exception in § 393.48(c) is contingent upon the conditions outlined in § 393.42(b)(2). Towed vehicles must have brakes as may be necessary to ensure compliance

with the performance requirements of § 393.52. A motor vehicle towed by means of a tow-bar when any other vehicle is full-mounted on the towed vehicle, or any combination of motor vehicles utilizing 3 or more saddle-mounts, would not be covered under the exception found at § 393.48(c).

With regard to the disabled-vehicle provision of § 393.48(c)(1), the combination vehicle would have to meet the applicable performance requirements of § 393.52.

Section 393.49 Single Valve To Operate All Brakes

Question 1: Does a combination of vehicles using a surge brake to activate the towed vehicle's brakes comply with § 393.49?

Guidance: No. The surge brake cannot keep the trailer brakes in an applied position. Therefore, the brakes on the combination of vehicles are not under the control of a single valve as required by § 393.49 (see question number 1 in § 393.48)

Section 393.51 Warning Devices and Gauges

Question 1: Is the low pressure warning device required to activate before the tractor protection valve?

Guidance: No. Section 393.51 does not explicitly require the warning device to operate before the protection valve. It is implied that if the operating pressure of the warning device is at least ½ of the governor cut-out pressure, and that pressure is not less than the pressure at which the protection valve (or similar device) activates, the requirements of § 393.51 are satisfied.

Question 2: Is the vacuum portion of vacuum-assisted hydraulic brake systems required to have a warning device?

Guidance: No. Only the hydraulic portion of vacuum-assisted hydraulic brake systems is required to have a warning device. FMVSS No. 105 does not require a warning device for the vacuum portion of the vacuum-assisted hydraulic brake systems. It is the intention of the FHWA that § 393.51 be consistent with FMVSS No. 105.

Question 3: Are vacuum gauges required on the vacuum portion of vacuum-assisted hydraulic brakes?

Guidance: No. Section 393.51(d)(2) requires only that CMVs with vacuum brakes (not hydraulic brakes applied or assisted by vacuum) be equipped with a vacuum gauge.

Question 4: Is a warning device required in a CMV with a single hydraulic brake system which uses the driveline parking brake as the emergency brake system?

Guidance: No. Warning devices are not required on such CMVs because the driver will be given ample warning of system failure by the movement and feel of the brake pedal.

Question 5: What difference, if any, is there between a warning device and a warning signal?

Guidance: For purposes of § 393.51, the terms may be used interchangeably.

Section 393.52 Brake Performance

Question 1: May the information in the stopping distance table be used to determine the stopping distances at speeds greater than 20 mph?

Guidance: No, the table is not intended to be used to predict or determine stopping distances at speeds greater than 20 mph.

Section 393.60 Glazing in Specified Openings

Question 1: May windshields and side windows be tinted?

Guidance: Yes, as long as the light transmission is not restricted to less than 70 percent of normal (refer to the American Standards Association publication Z26.1–1966 and Z26.1a-1969).

Question 2: May a decal designed to comply with the periodic inspection documentation requirements of § 396.17 be displayed on the windshields or side windows of a CMV?

Guidance: Yes, provided the decal is being used in lieu of an inspection report and is in compliance with § 393.60(c).

Question 3: If a crack extended into the thickness of the glass at such an angle as to measure ¼'' or more, measuring from the top edge of the crack on the outside surface of the windshield to vertical line drawn through the windshield to the far edge of this angled crack on the inside of the windshield, would this constitute a crack of ¼'' or more in width as defined in § 393.60(b)(2)?

Guidance: No. The crack, in order to fall outside the exception, would have to be a gap of ¼'' or more on the same surface of the windshield.

Section 393.61 Window Construction

Question 1: Do school buses used for purposes other than school bus operations (as defined in § 390.5), have to meet additional emergency exits requirements under § 393.61?

Guidance: Yes. Section 393.61(b)(2) says that ''a bus, including a school bus, manufactured on and after September 1, 1973,'' must conform with NHTSA's § 571.217 (FMVSS 217). At the time this provision was adopted, FMVSS 217 applied only to other buses and it was optional for school buses. The FHWA inserted the language, ''including school buses,'' in § 393.61(b)(2) to make clear that school buses used in interstate commerce and, therefore, subject to the FMCSRs, were required to comply with the bus exit standards in Standard FMVSS 217.

Section 393.61(b)(3) regarding push-out windows provides that older buses must conform with the requirements of §§ 393.61(b) or 571.217. Buses which are subject to § 571.217 would follow NHTSA's interpretation on push-out windows. Buses which are subject to § 393.61(b)(1) of the FMCSRs are required to have emergency windows that are either push-out windows or that have laminated safety glass that can be pushed out in a manner similar to a push-out window.

Question 2: For emergency exits which consist of laminated safety glass, is the window frame or sash required to move outward from the bus as is the case with push-out windows?

Guidance: No. Laminated safety glass is an alternative to the use of push-out windows for buses manufactured before September 1, 1973. Section 393.61(c) requires that every glazed opening used to satisfy the emergency exit space requirements, ''if not glazed with laminated safety glass, shall have a frame or sash so designed, constructed, and maintained that it will yield outwardly to provide the required free opening. * * *'' Laminated safety glass meeting Test No. 25, Egress, American National Standard ''Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' Z26.1–1966 as supplemented by Z26.1a–1969 (referenced in §§ 393.61(c) and 393.60(a)) is intended to provide an adequate means of emergency exit on older buses without resorting to push-out windows.

However, buses with a seating capacity of more than 10 people manufactured after September 1, 1973, must have push-out windows that conform to 49 CFR 571.217.

Question 3: When calculating the minimum emergency exit space required on school buses used in non-school bus operations, should two or three passengers per bench seat be used in determining the adult seating capacity?

Guidance: The NHTSA has indicated that ''School buses can transport 3 to a seat if the passengers are in grades 1 through 5, and 2 per seat in grades 9 through 12.'' (May 9, 1995, 60 FR 24562, 24567) Therefore, for vehicles originally manufactured as school buses, the total pupil seating capacity provided by the

bus manufacturer should be multiplied by ⅔ to determine the adult seating capacity for the purposes of § 393.61. This generally yields the same result as using two adults per bench seat.

Question 4: Do school buses which meet the school bus emergency exit requirements established by the NHTSA's November 2, 1992, final rule on FMVSS No. 217 have to be retrofitted with additional emergency exits when used in interstate commerce for non-school bus operations?

Guidance: No. On May 9, 1995, the NHTSA amended FMVSS No. 217 to permit non-school buses to meet either the current non-school bus emergency exit requirements or the upgraded school bus exit requirements established by the November 2, 1992 (57 FR 49413), final rule which became effective on September 1, 1994. Therefore, school buses which meet the upgraded emergency exit standards meet the requirements of § 393.61 without the retrofitting of additional exits.

Question 5: Which edition of FMVSS No. 217 is required to be used in determining the emergency exit space requirements when retrofitting buses?

Guidance: The cross reference to FMVSS No. 217 applies to the requirements in effect at the time of manufacture of the bus. Motor carriers are not, however, prohibited from retrofitting their buses to the most up-to-date requirements in FMVSS No. 217. Therefore, at a minimum, motor carriers must meet the non-school bus emergency exit requirements in effect at the time of manufacture, and have the option of retrofitting their buses to meet the emergency exit requirements established by the November 2, 1992 (57 FR 49413), final rule which became effective on September 1, 1994.

Section 393.62 Window Obstructions

Question 1: May a bus being operated by a for-hire motor carrier of passengers, under contract with a governmental agency to provide transportation of prisoners in interstate commerce, be allowed to operate with security bars covering the emergency push-out windows and with locked emergency door exits?

Guidance: Yes. Even when the transportation is performed by a contract carrier, the welfare, safety, and security of the prisoners is under the authority of the governmental corrections agency and, thus, the agency may require additional security measures. For these types of operations, a carrier may meet the special security requirements of the governmental corrections agency regarding emergency exits. However, CMVs that have been modified to meet the security requirements of the corrections agency may not be used for other purposes that are subject to the FMCSRs unless they meet the emergency exit requirements.

Section 393.65 All Fuel Systems

Question 1: May a fuel fill pipe opening be placed above the passenger floor level if it is not physically within the passenger compartment?

Guidance: Yes. In addition, the fill pipe may intrude into the passenger compartment as long as the fill pipe opening complies with § 393.65(b)(4), and the fill pipe is protected by a housing or covering to prevent leakage of fuel or fumes into the passenger compartment.

Question 2: Must a motor vehicle that meets the definition of a ''commercial motor vehicle'' in § 390.5 because it transports hazardous materials in a quantity requiring placarding under the Hazardous Materials Regulations (49 CFR parts 171–180) comply with the fuel system requirements of Subpart E of Part 393, even though it has a gross vehicle weight rating (GVWR) of 10,000 pounds or less?

Guidance: No. FMVSS No. 301 contains fuel system integrity requirements for passenger cars and multipurpose passenger vehicles, trucks, and buses that have a GVWR of 10,000 pounds or less and use fuel with a boiling point above 0° Celsius (32° Fahrenheit). Subpart E of part 393 was issued to provide fuel system requirements to cover motor vehicles with a GVWR of 10,001 or more pounds. The fuel systems of placarded motor vehicles with a GVWR of less than 10,001 pounds are adequately addressed by FMVSS No. 301 and compliance with subpart E of part 393 would be redundant. However, commercial motor vehicles that are not covered by FMVSS No. 301 must continue to comply with subpart E of part 393.

Section 393.67 Liquid Fuel Tanks

Question 1: May a properly vented fuel cap be used on a fuel tank equipped with another fuel venting system?

Guidance: Yes (see § 393.3).

Question 2: Do the FMCSRs specify a particular pressure relief system?

Guidance: No, but the performance standards of § 393.67(d) must be met.

Question 3: What standards under the FMCSRs must be met when a liquid fuel tank is repaired or replaced?

Guidance: A replacement/repaired tank must meet the applicable standards in § 393.67.

Section 393.70 Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations

Question 1: Is there a minimum number of fasteners required to fasten the upper fifth wheel plate to the frame of a trailer?

Guidance: The FMCSRs do not specify a minimum number of fasteners. However, the industry recommends that a minimum of ten ⅝ inch bolts be used. If ½ inch bolts are used, the industry recommends at least 14 bolts. The CVSA has adopted these industry standards as a part of its vehicle out-of-service criteria.

Question 2: When two safety chains are used, must the ultimate combined breaking strength of each chain be equal to the gross weight of the towed vehicle(s) or would the requirements be met if the combined breaking strength of the two chains is equal to the gross weight of the towed vehicle(s)?

Guidance: If the ultimate combined breaking strength of the two chains is equal to the gross weight of the towed vehicle(s), the requirements of § 393.70(d) are satisfied. It should be noted that some States may have more stringent requirements for safety chains.

Question 3: Section 393.70(d) requires that every full trailer must be coupled to the frame, or an extension of the frame, of the motor vehicle which tows it with one or more safety devices to prevent the towed vehicle from breaking loose in the event the tow-bar fails or becomes disconnected. The safety device must be connected to the towed and towing vehicles and to the tow-bar in a manner which prevents the tow-bar from dropping to the ground in the event it fails or becomes disconnected. Would the use of a pair of safety chains/cables between the towing vehicle and the front of a fixed-length draw bar, or an extendible draw bar, with a separate pair of safety chains/cables between the end of the draw bar and the front of the towed vehicle meet the requirements of § 393.70(d)?

Guidance: Generally, separate safety devices at the front and rear of the draw bar could be used to satisfy the requirements of § 393.70(d) provided the safety devices are attached to the drawbar and the vehicles in a manner that prevents the drawbar from dropping to the ground in the event that it fails or becomes disconnected. Also, the arrangement of the safety device(s) must be such that the vehicles will not separate if the draw bar fails or becomes disconnected.

If the drawbar design is such that bolts, connecting pins, etc., are used to connect structural members of the

drawbar, and are located at or near the midpoint of the drawbar (beyond the attachment points for the safety chain at the ends of the draw bar) the safety devices would have to extend from either the frame of the towed or towing vehicle to a point beyond the bolts, connecting pins or similar devices.

In the case of an extendible draw bar or reach, if a separate safety device(s) is used for the front and rear of the drawbar, a means must be provided to ensure that the drawbar will not separate at the movable portion of the drawbar. The use of welded tube stops would satisfy the intent of § 393.70(d) if the ultimate strength of the welds exceeds the impact forces associated with the drawbar extending suddenly with a fully loaded trailer attached.

Section 393.71 Coupling Devices and Towing Methods, Driveaway-Towaway Operations

Question 1: May a fifth wheel be considered as a coupling device when towing a semi-trailer in a driveaway-towaway operation?

Guidance: Yes. Section 393.71(g) requires the use of a tow-bar or a saddle-mount. Since a saddle-mount performs the function of a conventional fifth wheel, the use of a fifth wheel is consistent with the requirements of this section.

Section 393.75 Tires

Question 1: If a CMV has a defective tire, may the driver remove the defective tire from the axle and drive with three tires on an axle instead of four?

Guidance: Yes, provided the weight on all of the remaining tires does not exceed the maximum allowed under § 393.75(f).

Question 2: May a CMV be operated with tires that carry a greater weight than the weight marked on the sidewall of the tires?

Guidance: Yes, but only if the CMV is being operated under the terms of a State-issued special permit, and at a reduced speed that is appropriate to compensate for tire loading in excess of the rated capacity.

Question 3: May a vehicle transport HM when equipped with retreaded tires?

Guidance: Yes. The only CMV that may not utilize retreaded tires is a bus, and then only on its front wheels.

Question 4: May tires be filled with materials other than air (e.g., silicone, polyurethane)?

Guidance: Section 393.75 does not prohibit the use of tires filled with material other than air. However, § 393.3 may prohibit the use of such tires under certain circumstances. Some substances used in place of air in tires may not maintain a constant physical state at different temperatures. While these substances are solid at lower temperatures, the increase in temperature from highway use may result in the substance changing from a solid to a liquid. The use of a substance which could undergo such a change in its physical characteristics is not safe, and is not in compliance with § 393.3.

Section 393.76 Sleeper Berths

Question 1: If a compartment in a CMV is no longer used as a sleeper berth, must it be maintained and equipped as a sleeper berth as required in § 393.76?

Guidance: No.

Section 393.78 Windshield Wipers

Question 1: Are windshield washer systems required?

Guidance: No, only windshield wipers are required.

Section 393.81 Horn

Question 1: Do the FMCSRs specify what type of horn is to be used on a CMV?

Guidance: No.

Question 2: Are there established criteria in the FMCSRs to determine the minimum sound level of horns on CMVs?

Guidance: No.

Section 393.82 Speedometer

Question 1: What does the phrase ''reasonable accuracy'' mean?

Guidance: ''Reasonable accuracy'' is interpreted to mean accuracy to within plus or minus 5 mph at a speed of 50 mph.

Section 393.83 Exhaust System

Question 1: Is a heat shield mandatory on a vertical exhaust stack?

Guidance: No. However, § 393.83 requires the placement of the exhaust system in such a manner as to prevent the burning, charring, or damaging of the electrical wiring, the fuel supply, or any combustible part of the CMV.

Question 2: Does § 393.83 specify the type of exhaust system, vertical or horizontal, to be used on trucks or truck tractors?

Guidance: No.

Section 393.87 Flags on Projecting Loads

Question 1: May a triangular-shaped flag or device be used by itself to mark an oversized load?

Guidance: No. However, nothing prohibits using a triangular-shaped flag in conjunction with the prescribed flag.

Section 393.88 Television Receivers

Question 1: Does § 393.88 restrict the use of closed circuit monitor devices being used as a safety viewing system that would eliminate blind-side motor carrier accidents?

Guidance: No. The restriction of this section would not apply because the device cannot receive television broadcasts or be used for the viewing of video tapes.

Section 393.89 Buses, Drive Shaft Protection

Question 1: For the purposes of § 393.89, would a spline and yoke that is secured by a nut be considered a sliding connection?

Guidance: No. To be considered a sliding connection, the spline must be able to move within the sleeve. When the end of the spline is secured by a nut, it no longer has that freedom.

Question 2: On multiple drive shaft buses, does § 393.89 require that all segments of the drive shaft be protected no matter the segments' length?

Guidance: Yes. Each drive shaft must have one guard or bracket for each end of a shaft which is provided with a sliding connection (spline or other such device).

Question 3: How does an existing pillow bearing (shaft support) on a multiple driveshaft system affect the requirement?

Guidance: It does not affect the requirement. It is part of the requirement.

Section 393.92 Buses, Marking Emergency Doors

Question 1: Is a contractor-operated school bus operating in interstate commerce required to have emergency lights over the exit door?

Guidance: Yes. Any bus used in interstate commerce for other than school bus operations, as defined in § 390.5, is subject to the FMCSRs.

Section 393.93 Seats, Seat Belt Assemblies, and Seat Belt Assembly Anchorages

Question 1: If a CMV, other than a motorcoach, is equipped with a passenger seat, is a seat belt required for the passenger seat?

Guidance: Yes.

Section 393.95 Emergency Equipment on all Power Units

Question 1: Are pressure gauges the only acceptable means for a visual determination that a fire extinguisher is fully charged?

Guidance: No, as long as there is some means to permit a visual determination that a fire extinguisher is fully charged.

Section 393.100 General Rules for Protection Against Shifting or Falling Cargo

Question 1: When securing cargo, is the use of a tiedown every 10 linear feet, or fraction thereof, adequate?

Guidance: Yes, as long as the aggregate strength of the tiedowns is equal to the requirements of § 393.102, and each article is secured.

Question 2: Are CMVs transporting metal objects required to use option C?

Guidance: Only those CMVs which cannot comply with options A, B, or D, are required to conform to option C (see § 393.100(c)).

Question 3: Are the requirements of § 393.100 the only cargo securement requirements motor carriers must comply with?

Guidance: No. A motor carrier, when transporting cargo, must comply with all the applicable cargo securement requirements of subpart I and § 392.9.

Question 4: Do the rules for protection against shifting or falling cargo apply to CMVs with enclosed cargo areas?

Guidance: Yes. All CMVs transporting cargo must comply with the applicable provisions of §§ 393.100–393.106 (subpart I) to prevent the shifting or falling of cargo aboard the vehicle.

Question 5: How many tiedowns are required for the transportation of logs on pole trailers with trip-bolsters or other stanchions?

Guidance: The regulations do not specify a minimum number of tiedowns. Section 393.100(b) provides motor carriers with several options for complying with § 393.100. Although option B specifically addresses the use of tiedowns for each 10 linear feet of lading or fraction thereof (with certain exceptions), option D indicates the motor carrier may use ''other means * * * which are similar to, and at least as effective * * *'' as options A, B, and C. Therefore, the trip-bolsters or other stanchions in conjunction with securement devices meeting the requirements of § 393.102 may (depending on the amount by which the logs exceed the length of the trailer) be used to satisfy option D.

Question 6: Are logs which are bundled together with tiedowns and transported on pole trailers with trip-bolsters or stanchions required to be fastened to the vehicle?

Guidance: Yes. Generally, cargo is not considered to be secured in accordance with subpart I of part 393 unless tiedowns or other securement devices prevent the cargo from moving relative to the vehicle. Two rules in § 393.100 are directly applicable to the transportation of logs on a pole trailer.

Section 393.100(b)(2), *Option B,* requires one tiedown assembly for each 10 linear feet of lading or fraction thereof. However, ''a pole trailer * * * is required only to have two * * * of those tiedown assemblies at each end of the trailer,'' i.e., at the stanchions, because the cargo cannot effectively be secured at mid-trailer where its structure is limited to the pole or boom.

Section 393.100(b)(4), *Option D,* allows the motor carrier to use a securement system that is similar to, and at least as effective as Option B.

Section 393.100(d) states that the rules in § 393.100 do not apply to the transportation of ''one or more articles which, because of their size, shape, or weight, must be carried on special purpose vehicles or must be fastened by special methods.'' However, since pole trailers are explicitly included in § 393.100(b)(2), they are not special purpose vehicles and logs must be secured in accordance with § 393.100(b).

Section 393.102 Securement Systems

Question 1: Does § 393.102(b) prohibit the use of securement devices for which manufacturing standards have not been incorporated by reference?

Guidance: Section 393.102(b) requires that chain, wire rope, synthetic webbing, cordage, and steel strapping meet minimum manufacturing standards. It does not, however, prohibit the use of other types of securement devices or establish manufacturing standards for those devices. Therefore, if the securement device(s) has an aggregate working load limit of at least 1/2 the weight of the article, and the load is secured to prevent it from shifting or falling from the vehicle, §§ 393.100 and 393.102(b) would be satisfied.

If the cargo is not firmly braced against a front-end structure that conforms to the requirements of § 393.106, the securement system would have to provide protection against longitudinal movement [§ 393.104(a)]. If the load may shift sideways in transit then § 393.104(b) would also be applicable.

Question 2: Does § 393.102(b) require that securement devices be marked or labeled with their working load limit or any other information?

Guidance: No. Although § 393.102(b) requires chain, wire rope, synthetic webbing, cordage, and steel strapping tiedowns to meet applicable manufacturing standards, it explicitly excludes marking identification provisions of those manufacturing standards. Since § 393.102(b) does not establish manufacturing standards or marking requirements for other types of securement devices, such devices are not required to be marked with their working load limit.

Section 393.106 Front-end Structure

Question 1: When describing a headerboard or cab protection device, the regulations state that similar devices may be used. What is meant by the term ''similar devices''?

Guidance: The term ''similar devices'' has reference to devices equivalent in strength and function, though not necessarily in appearance and construction, to headerboards.

Section 393.201 Frames

Question 1: Are crossmembers of CMVs considered part of the frame?

Guidance: Yes.

Question 2: Does § 393.201 of the FMCSRs apply to trailers?

Guidance: No. Section 393. 201 is specific to buses, trucks, and truck tractors.

Question 3: Are welded repairs or modifications to the frame of a CMV violations of the FMCSRs?

Guidance: Welding would not be a violation of the FMCSRs unless the process used for the metals being welded or the location of the weld reduced the safety of operation of the vehicle. The safety of a repaired and/or modified vehicle would depend on the structural design of the frame, as well as the modifications performed. The manufacturer of the vehicle should be contacted for assistance.

Special Topics—CMV Parts and Accessories

Question 1: Do tires marked ''NHS'' (not for highway service) mean that highway use is prohibited by § 393.75?

Guidance: No, provided the use of such tires does not decrease the safety of operations (see Periodic Inspection Requirements, Appendix G to subpart B).

PART 395—HOURS OF SERVICE OF DRIVERS

Sections Interpreted

395.1 Scope of the Rules in This Part
395.2 Definitions
395.3 Maximum Driving and On-Duty Time
395.8 Driver's Record of Duty Status
395.13 Drivers Declared Out of Service
395.15 Automatic On-Board Recording Devices

Section 395.1 Scope of the Rules in This Part

Question 1: What hours-of-service regulations apply to drivers operating between the United States and Mexico or between the United States and Canada?

Guidance: When operating CMVs, as defined in § 390.5, in the United States, all hours-of-service provisions apply to all drivers of CMVs, regardless of nationality, point of origin, or where the driving time or on-duty time was accrued.

Question 2: If a driver invokes the exception for adverse driving conditions, does a supervisor need to sign the driver's record of duty status when he/she arrives at the destination?

Guidance: No.

Question 3: May a driver use the adverse driving conditions exception if he/she has accumulated driving time and on-duty (not driving) time, that would put the driver over 15 hours or over 70 hours in 8 consecutive days?

Guidance: No. The adverse driving conditions exception applies only to the 10-hour rule.

Question 4: Are there allowances made in the FMCSRs for delays caused by loading and unloading?

Guidance: No. Although the regulations do make some allowances for unforeseen contingencies such as in § 395.1(b), adverse driving conditions, and § 395.1(b)(2), emergency conditions, loading and unloading delays are not covered by these sections.

Question 5: How may a driver utilize the adverse driving conditions exception or the emergency conditions exception as found in § 395.1(b), to preclude an hours of service violation?

Guidance: An absolute prerequisite for any such claim must be that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or should have known of adverse driving conditions are not eligible for the two hours additional driving time provided for under § 395.1(b), adverse driving conditions. The term ''in any emergency'' shall not be construed as encompassing such situations as a driver's desire to get home, shippers' demands, market declines, shortage of drivers, or mechanical failures.

Question 6: What does ''servicing'' of the field operations of the natural gas and oil industry cover?

Guidance: Servicing of field operations, as described by the ICC report issued with this exemption, covers those services generally performed by specialized companies supporting the petroleum drilling and producing industry, ''including testing, mudfilling, cementing, hydraulic fracturing, voltage, logging, and resistivity measurements, and cleaning of industrial equipment, as the particular requirement might arise in the normal course of well digging or maintenance operations * * *'' (89 M.C.C. 19, at 28, March 29, 1962). Water servicing companies, whose operations are exclusive to servicing the natural gas and oil industry, are also covered by the provisions of § 395.1(d).

Section 395.1(d) applies only to situations involving drilling or the operation of wells. It does not apply to exploration activities.

Question 7: What is considered ''oilfield equipment'' for the purposes of 395.1(d)(1)?

Guidance: Oilfield equipment is not specifically defined in this section. However, its meaning is broader than the ''specially constructed'' commercial motor vehicles referred to in § 395.1(d)(2), and may encompass a spectrum of equipment ranging from an entire vehicle to hand-held devices.

Question 8: What kinds of oilfield equipment may drivers operate while taking advantage of the special rule in § 395.1(d)(2)?

Guidance: The special rule in § 395.1(d)(2) applies only to drivers transporting the equipment identified by the former Interstate Commerce Commission (now part of the Federal Highway Administration) in a 1962 report to accompany the oilfield rule. The report indicated the specialized equipment normally consists of heavy machinery permanently mounted on commercial motor vehicles, designed to fill a specific need.

Question 9: Are drivers required to be dedicated permanently to the oilfield industry, or must they exclusively transport oilfield equipment or service the field operations of the industry only for each eight-day (or shorter) period ended by an off-duty period of 24 or more consecutive hours?

Guidance: A driver must exclusively transport oilfield equipment or service the field operations of the industry for each eight-day (or shorter) period before his/her off-duty period of 24 or more consecutive hours. However, he/she must be in full compliance with the requirements of 395.3(b) before driving other commercial motor vehicles not used to service the field operations of the natural gas or oil industry.

Question 10: A driver is used exclusively to transport materials (such as sand or water) which are used exclusively to service the field operations of the natural gas or oil industry. Occasionally, the driver has leftover materials that must be transported back to a motor carrier facility or service depot. Would such a return trip be covered by § 395.1(d)(1)?

Guidance: Yes. Transporting excess materials back to a facility from the well site is part of the servicing operations. However, such servicing operations are limited to transportation back and forth between the service depot or motor carrier facility and the field site. Transportation of materials from one depot to another, from a railhead to a depot, or from a motor carrier terminal to a depot, is not considered to be in direct support of field operations.

Question 11: May specially trained drivers of specially constructed oil well servicing vehicles cumulate the 8 consecutive hours off duty required by § 395.3 by combining off-duty time or sleeper-berth time at a natural gas or oil well site with off-duty time or sleeper-berth time while en route to or from the well?

Guidance: These drivers may cumulate the required 8 consecutive hours off duty by combining two separate periods, each at least 2 hours long, of off-duty time or sleeper-berth time at a natural gas or oil well location with sleeper-berth time in a CMV while en route to or from such a location. They may also cumulate the required 8 consecutive hours off duty by combining an off-duty period of at least 2 hours at a well site with: (1) Another off-duty period at the well site that, when added to the first such period, equals at least 8 hours, or (2) a period in a sleeper-berth, either at or away from the well site, or in other sleeping accommodations at the well site, that, when added to the first off-duty period, equals at least 8 hours.

However, such drivers may not combine a period of less than 8 hours off duty *away* from a natural gas or oil well site with another period of less than 8 hours off duty *at* such well sites. The special provisions for drivers at well sites are strictly limited to those locations.

The following table indicates what types of off-site and on-site time periods may be combined.

	On Site Off Duty Time	On Site Sleeper Berth	On Site Other Sleeping Accommodation
Away from Site Off Duty Time Away from Site Sleeper Berth Time. Away from Site Other Sleeping Accommodation	X Combination must be 8 or more hours.	X Combination must be 8 or more hours.	X Combination must be 8 or more hours.

Question 12: What constitutes the 100-air-mile radius exemption?

Guidance: The term ''air mile'' is internationally defined as a ''nautical mile'' which is equivalent to 6,076 feet or 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute miles or 185.2 kilometers.

Question 13: What documentation must a driver claiming the 100-air-mile radius exemption [§ 395.1(e)] have in his/her possession?

Guidance: None.

Question 14: Must a motor carrier retain 100-air-mile driver time records at its principal place of business?

Guidance: No. However, upon request by an authorized representative of the FHWA or State official, the records must be produced within a reasonable period of time (2 working days) at the location where the review takes place.

Question 15: May an operation that changes its normal work-reporting location on an intermittent basis utilize the 100-air-mile radius exemption?

Guidance: Yes. However, when the motor carrier changes the normal reporting location to a new reporting location, that trip (from the old location to the new location) must be recorded on the record of duty status because the driver has not returned to his/her normal work reporting location.

Question 16: May a driver use a record of duty status form as a time record to meet the requirement contained in the 100-air-mile radius exemption?

Guidance: Yes, provided the form contains the mandatory information.

Question 17: Is the ''mandatory information'' referred to in the previous guidance that required of a normal RODS under § 395.8(d) or that of the 100-air-mile radius exemption under § 395.1(e)(5)?

Guidance: The ''mandatory information'' referred to is the time records specified by § 395.1(e)(5) which must show: (1) The time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) the total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

Using the RODS to comply with § 395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 18: Must the driver's name and each date worked appear on the time record prepared to comply with § 395.1(e), 100-air-mile radius driver?

Guidance: Yes. The driver's name or other identification and date worked must be shown on the time record.

Question 19: May drivers who work split shifts take advantage of the 100-air-mile radius exemption found at § 395.1(e)?

Guidance: Yes. Drivers who work split shifts may take advantage of the 100-air-mile radius exemption if: 1. The drivers operate within a 100-air-mile radius of their normal work-reporting locations; 2. The drivers return to their work-reporting locations and are released from work at the end of each shift and each shift is less than 12 consecutive hours; 3. The drivers are off-duty for more than 8 consecutive hours before reporting for their first shift of the day and spend less than 12 hours, in the aggregate, on-duty each day; 4. The drivers do not exceed a total of 10 hours driving time and are afforded 8 or more consecutive hours off-duty prior to their first shift of the day; and 5. The employing motor carriers maintain and retain the time records required by 395.1(e)(5).

Question 20: A company prepares and maintains time records for drivers classified as 100-air-mile radius drivers. The drivers usually do not work every day of the week. Does the motor carrier have to maintain time records for the days the drivers do not work?

Guidance: The motor carrier must maintain time records stating that the drivers were off-duty during the days the drivers did not work. However, if the drivers are off consecutive days, the employer may prepare a single time record stating the days each driver was off-duty.

Question 21: May a driver who is taking advantage of the 100-air-mile radius exemption in § 395.1(e) be intermittently off-duty during the period away from the work-reporting location?

Guidance: Yes, a driver may be intermittently off-duty during the period away from the work-reporting location provided the driver meets all requirements for being off-duty. If the driver's period away from the work-reporting location includes periods of off-duty time, the time record must show both total on-duty time and total off-duty time during his/her tour of duty. In any event, the driver must return to the work-reporting location and be released from work within 12 consecutive hours.

Question 22: When a driver fails to meet the provisions of the 100-air-mile radius exemption (§ 395.1(e)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. A driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the exemption cannot be met. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100-air-mile exemption.

Question 23: A driver returns to his/her normal work reporting location from a location beyond the 100-air-mile radius and goes off duty for 7 hours. May the driver return to duty after being off-duty for 7 hours and utilize the 100-air-mile radius exemption?

Guidance: No. The 7-hour off-duty period has not met the requirement of 8 consecutive hours separating each 12-hour on-duty period. The driver must first accumulate 8 consecutive hours off-duty before operating under the 100-air-mile radius exemption.

Question 24: Is the exemption contained in § 395.1(f) concerning department store deliveries during the period from December 10 to December

25 limited to only drivers employed by department stores?

Guidance: No. The exemption applies to all drivers engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air-mile radius of the driver's work-reporting location, during the dates specified.

Question 25: May time spent in sleeping facilities being transported as cargo (e.g., boats, campers, travel trailers) be recorded as sleeper berth time?

Guidance: No, it cannot be recorded as sleeper berth time.

Question 26: May sleeper berth time and off-duty periods be combined to meet the 8-hour off-duty requirement?

Guidance: Yes, as long as the 8-hour period is consecutive and not broken by on-duty or driving activities. This does not apply to drivers at natural gas or oil well locations who may separate the periods.

Question 27: May a driver record sleeper berth time as off-duty time on line one of the record of duty status?

Guidance: No. The driver's record of duty status must accurately reflect the driver's activities.

Question 28: After accumulating 8 consecutive hours of off-duty time, a driver spends 2 hours in the sleeper berth. The driver then drives a CMV for 10 hours, then spends 6 hours in the sleeper berth. May the driver combine the two sleeper berth periods to meet the required 8 consecutive hours of off-duty time per § 395.1(h), then drive for up to 10 more hours?

Guidance: No. The 10 hours of driving time between the first and second sleeper berth periods must be considered in determining the amount of time that the driver may drive after the second sleeper berth period. Sleeper berths are intended to be used between periods of on-duty time. When a driver has already been off duty for more than 8 consecutive hours, and has therefore had adequate opportunity to rest, he/she may not ''save'' additional hours before going on duty and add them to the next sleeper berth period. In short, a driver must be on duty before he/she begins to accumulate sleeper berth time. The driver in your scenario is operating in violation of the hours of service regulations for the entire second 10-hour driving period until that driver is able to secure at least 8 consecutive hours of off-duty time.

Section 395.2 Definitions

Question 1: A company told all of its drivers that it would no longer pay for driving from the last stop to home and that this time should not be shown on the time cards. Is it a violation of the FMCSRs to operate a CMV from the last stop to home and not show that time on the time cards?

Guidance: The FMCSRs do not address questions of pay. All the time spent operating a CMV for, or at the direction of, a motor carrier must be recorded as driving time.

Question 2: What conditions must be met for a CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance: 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a CMV will be significantly reduced.

3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.

4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

Question 3: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver required to record such time as off-duty, or is it the driver's decision whether such time is recorded as off-duty?

Guidance: It is the employer's choice whether the driver shall record stops made during a tour of duty as off-duty time. However, employers may permit drivers to make the decision as to how the time will be recorded.

Question 4: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver allowed to record his stops during a tour of duty as off-duty time when the CMV is laden with HM and the CMV is parked in a truck stop parking lot?

Guidance: Drivers may record meal and other routine stops made during a tour of duty as off-duty time, except when a CMV is laden with explosive HM classified as hazard divisions 1.1, 1.2, or 1.3 (formerly Class A or B explosives). In addition, when HM classified under hazard divisions 1.1, 1.2, or 1.3 are on a CMV, the employer and the driver must comply with § 397.5 of the FMCSRs.

Question 5: Do telephone calls to or from the motor carrier that momentarily interrupt a driver's rest period constitute a change of the driver's duty status?

Guidance: Telephone calls of this type do not prevent the driver from obtaining adequate rest. Therefore, the FHWA does not consider these brief telephone calls to be a break in the driver's off-duty status.

Question 6: If a driver is required by a motor carrier to carry a pager/beeper to receive notification to contact the motor carrier for a duty assignment, how should this time be recorded?

Guidance: The time is to be recorded as off-duty.

Question 7: May a sleeper berth be used for a period of less than 2 hours' duration?

Guidance: Yes. The sleeper berth may be used for such periods of inactivity. Periods of time of less than 2 hours spent in a sleeper berth may not be used to accumulate the 8 hours of off-duty time required by § 395.3 of the FMCSRs.

Question 8: If a ''driver trainer'' occasionally drives a CMV, thereby becoming a ''driver'' (regardless of whether he/she is paid for driving), must the driver record all nondriving (training) time as on-duty (not driving)?

Guidance: Yes.

Question 9: A driver drives on streets and highways during the week and jockeys CMVs in the yard (private property) on weekends. How is the yard time to be recorded?

Guidance: On-duty (driving).

Question 10: How does compensation relate to on-duty time?

Guidance: The fact that a driver is paid for a period of time does not always establish that the driver was on-duty for the purposes of part 395 during that period of time. A driver may be relieved of duty under certain conditions and still be paid.

Question 11: Must nontransportation-related work for a motor carrier be recorded as on-duty time?

Guidance: Yes. All work for a motor carrier, whether compensated or not, must be recorded as on-duty time. The term ''work'' as used in the definition of ''on-duty time'' in § 395.2 of the FMCSRs is not limited to driving or other nontransportation-related employment.

Question 12: How should time spent in transit on a ferry boat be recorded?

Guidance: Time spent on a ferry by drivers may be recorded as off-duty time

if they are completely relieved from work and all responsibility and obligation to the motor carriers for which they drive. This relief must be consistent with existing regulations of the ferry company and the U.S. Coast Guard.

Question 13: What is the duty status of a co-driver (truck) who is riding seated next to the driver?

Guidance: On-duty (not driving).

Question 14: How much a CMV driver driving a non-CMV at the direction of a motor carrier record this time?

Guidance: If CMV drivers operate motor vehicles with GVWRs of 10,000 pounds or less at the direction of a motor carrier, the FHWA requires those drivers to maintain records of duty status and record such time operating as on-duty (not driving).

Question 15: How much the time spent operating a motor vehicle on the rails (roadrailers) be recorded?

Guidance: On-duty (not driving).

Question 16: Must a driver engaged in union activities affecting the employing motor carrier record such time as on-duty (not driving) time?

Guidance: The union activities of a driver employed by a unionized motor carrier must be recorded as on-duty (not driving) time if the collective bargaining agreement requires the motor carrier to pay the driver for time engaged in such activities. Otherwise these activities may be recorded as off duty time unless they are combined with normal duties performed for the carrier.

Efforts by a driver to organize co-workers employed by a non-unionized motor carrier, either on the carrier's premises or elsewhere, may be recorded as off duty time unless the organizing activities are combined with normal duties performed for the carrier.

Question 17: How is the 50 percent driving time in the definition of ''driver-salesperson'' in § 395.2 determined?

Guidance: The driving time is determined on a weekly basis. The driver must be employed solely as a driver-salesperson. The driver-salesperson may not participate in any other type of work activity.

Question 18: May a driver change to and from a driver-salesman status at any time?

Guidance: Yes, if the change is made on a weekly basis.

Question 19: May the time a driver spends attending safety meetings, ceremonies, celebrations, or other company-sponsored safety events be recorded as off-duty time?

Guidance: Yes, if attendance is voluntary.

Question 20: How must a driver record time spent on-call awaiting dispatch?

Guidance: The time that a driver is free from obligations to the employer and is able to use that time to secure appropriate rest may be recorded as off-duty time. The fact that a driver must also be available to receive a call in the event the driver is needed at work, even under the threat of discipline for non-availability, does not by itself impair the ability of the driver to use this time for rest.

If the employer generally requires its drivers to be available for call after a mandatory rest period which complies with the regulatory requirement, the time spent standing by for a work-related call, following the required off-duty period, may be properly recorded as off-duty time.

Question 21: How does a driver record the hours spent driving in a school bus operation when he/she also drives a CMV for a company subject to the FMCSRs?

Guidance: If the school bus meets the definition of a CMV, it must be recorded as driving time.

Question 22: A motor carrier relieves a driver from duty. What is a suitable facility for resting?

Guidance: The only resting facility which the FHWA regulates is the sleeper berth. The sleeper berth requirements can be found in § 393.76.

Question 23: How many times may a motor carrier relieve a driver from duty within a tour of duty?

Guidance: There is no limitation on the number of times a driver can be relieved from duty during a tour of duty.

Question 24: If a driver is transported by automobile from the point of a breakdown to a terminal, and then dispatched on another run, how is the time spent in the automobile entered on the record of duty status? How is the time entered if the driver goes off-duty once he reaches the terminal?

Guidance: The time spent in the automobile would be on-duty (not driving) if dispatched on another run once he/she reaches the terminal, and off-duty if he/she is given 8 consecutive hours off-duty upon reaching the terminal.

Question 25: When a driver experiences a delay on an impassable highway, should the time he/she is delayed be entered on the record of duty status as driving time or on-duty (not driving)?

Guidance: Delays on impassable highways must be recorded as driving time because § 395.2 defines ''driving time'' as all time spent at the driving controls of a CMV in operation.

Question 26: Is time spent operating controls in a CMV to perform an auxiliary, non-driving function (e.g., lifting a loaded container, compacting waste, etc.) considered driving time? Does the location of the controls have a bearing on the answer?

Guidance: The location of the controls does have a bearing on the answer. Section 395.2 defines ''driving time'' as all time spent at the driving controls of a CMV in operation. If a driver, seated at the driving controls of the vehicle, is able to simultaneously perform the driving and auxiliary function (for example, one hand on the steering wheel and one hand on a control mechanism), the time spent performing the auxiliary function must be recorded as ''driving time.'' If a driver, seated at the driving controls of the vehicle, is unable to simultaneously perform the driving and auxiliary function, the time spent performing the auxiliary function may be recorded as ''on-duty not driving time.''

Question 27: A motor carrier has full-time drivers who are also volunteer fire fighters. Some of the drivers carry pagers and leave their normal activities only when notified of a fire. Others consistently work 3 to 4 non-consecutive 24-hour shifts at a fire station each month, resting between calls. The drivers receive no monetary compensation for their work. How should the time spent on these activities be logged on the record of duty status when the drivers return to work?

Guidance: When drivers are free from obligations to their employers, that time may be recorded as off-duty time. Drivers who are allowed by the motor carrier to leave their normal activities to fight fires and those who spend full days in a fire station are clearly off duty. Their time should be recorded as such.

Question 28: How should time spent at National Guard meetings and training sessions be recorded for the hours of service requirements?

Guidance: A member of a military reserve component, serving on either an inactive duty status, such as on a weekend drill, or in an active duty status, such as annual training, need only log as ''on duty'' time that time during which he or she is required to perform work, and not that time during which he or she is required or permitted to rest.

Section 395.3 Maximum Driving and On-duty Time

Question 1: May a motor carrier switch from a 60-hour/7-day limit to a 70-hour/8-day limit or vice versa?

Guidance: Yes. The only restriction regarding the use of the 70-hour/8-day rule is that the motor carrier must have CMVs operating every day of the week. The 70-hour/8-day rule is a permissive

provision in that a motor carrier with vehicles operating every day of the week is not required to use the 70-hour/8-day rules for calculating its drivers' hours of service. The motor carrier may, however, assign some or all of its drivers to operate under the 70-hour/8-day rule if it so chooses. The assignment of individual drivers to the 60-hour/7-day or the 70-hour/8-day time rule is left to the discretion of the motor carrier.

Question 2: Does a driver, employed full time by one motor carrier using the 60-hours in 7-days rule, and part-time by another motor carrier using the 70-hours in 8-days rule, have the option of using either rule in computing his hours of service?

Guidance: No. The motor carrier that employs the driver on a full-time basis determines which rule it will use to comply with § 395.3(b). The driver does not have the option to select the rule he/she wishes to use.

Question 3: May a carrier which provides occasional, but not regular service on every day of the week, have the option of the 60 hours in 7 days or 70 hours in 8 days with respect to all drivers, during the period in which it operates one or more vehicles on each day of the week?

Guidance: Yes.

Question 4: A Canadian driver is subjected to a log book inspection in the U.S. The driver has logged one or more 13-hour driving periods while in Canada during the previous 7 days, but has complied with all the FMCSRs while operating in the U.S. Has the driver violated the 10-hour driving requirement in the U.S.?

Guidance: No. Canadian drivers are required to comply with the FMCSRs only when operating in the U.S.

Question 5: May a driver domiciled in the United States comply with the Canadian hours of service regulations while driving in Canada? If so, would the driving and on-duty time accumulated in Canada be counted toward compliance with one or more of the limits imposed by part 395 when the driver re-enters the United States?

Guidance: A driver domiciled in the United States may comply with the Canadian hours of service regulations while driving in Canada. Upon re-entering the United States, however, the driver is subject to all of the requirements of part 395, including the 10- and 15-hour rules, and the 60- or 70-hour rules applicable to the previous 7 or 8 consecutive days.

In other words, a driver who takes full advantage of Canadian law may have to stop driving for a time immediately after returning to the U.S. in order to restore compliance with part 395. Despite its possible effect on decisions a U.S. driver must make while in Canada, this interpretation does not involve an exercise of extraterritorial jurisdiction.

Question 6: If a motor carrier operates under the 70-hour/8-day rule, does any aspect of the 60-hour rule apply to its operations? If a motor carrier operates under the 60-hour/7-day rule, does any part of the 70-hour rule apply to its operations?

Guidance: If a motor carrier operates 7 days per week and chooses to require all of its drivers to comply with the 70-hour/8-day rule, the 60-hour/7-day rule would not be applicable to these drivers. If this carrier chooses to assign some or all of its drivers to the 60-hour/7-day rule, the 70-hour rule would not be applicable to these drivers. Conversely, if a motor carrier *does not* operate 7 days per week, it *must* operate under the 60-hour/7-day rule and the 70-hour rule would not apply to its operations.

Question 7: What is the liability of a motor carrier for hours of service violations?

Guidance: The carrier is liable for violations of the hours of service regulations if it had or should have had the means by which to detect the violations. Liability under the FMCSRs does not depend upon actual knowledge of the violations.

Question 8: Are carriers liable for the actions of their employees even though the carrier contends that it did not require or permit the violations to occur?

Guidance: Yes. Carriers are liable for the actions of their employees. Neither intent to commit, nor actual knowledge of, a violation is a necessary element of that liability. Carriers ''permit'' violations of the hours of service regulations by their employees if they fail to have in place management systems that effectively prevent such violations.

Section 395.8 Driver's Record of Duty Status

Question 1: How should a change of duty status for a short period of time be shown on the driver's record of duty status?

Guidance: Short periods of time (less than 15 minutes) may be identified by drawing a line from the appropriate on-duty (not driving) or driving line to the remarks section and entering the amount of time, such as ''6 minutes,'' and the geographic location of the duty status change.

Question 2: May a rubber stamp signature be used on a driver's record of duty status?

Guidance: No, a driver's record of duty status must bear the signature of the driver whose time is recorded thereon.

Question 3: If a driver's record of duty status is not signed, may enforcement action be taken on the current day's record if it contains false information?

Guidance: Enforcement action can be taken against the driver even though that record may not be signed. The regulations require the driver to keep the record of duty status current to the time of last change of duty status (whether or not the record has been signed). Also, § 395.8(e) states that making false reports shall make the driver and/or the carrier liable to prosecution.

Question 4: Must drivers, alternating between interstate and intrastate commerce, record their intrastate driving time on their record of duty status?

Guidance: Yes, to account for all on-duty time for the prior 7 or 8 days preceding an interstate movement.

Question 5: May a driver, being used for the first time, submit records of duty status for the preceding 7 days in lieu of a signed statement?

Guidance: The carrier may accept true and accurate copies of the driver's record of duty status for the preceding 7 days in lieu of the signed statement required by § 395.8(j)(2).

Question 6: How should multiple short stops in a town or city be recorded on a record of duty status?

Guidance: All stops made in any one city, town, village or municipality may be computed as one. In such cases the sum of all stops should be shown on a continuous line as on-duty (not driving). The aggregate driving time between such stops should be entered on the record of duty status immediately following the on-duty (not driving) entry. The name of the city, town, village, or municipality, followed by the State abbreviation where all the stops took place, must appear in the ''remarks'' section of the record of duty status.

Question 7: Is the Canadian bilingual or any other record of duty status form acceptable in the U.S.?

Guidance: Yes, provided the grid format and specific information required are included.

Question 8: May a motor carrier return a driver's completed record of duty status to the driver for correction of inaccurate or incomplete entries?

Guidance: Yes, although the regulations do not require a driver to submit ''corrected'' records of duty status. A driver may submit corrected records of duty status to the motor

carrier at any time. It is suggested the carrier mark the second submission ''CORRECTED COPY'' and staple it to the original submission for the required retention period.

Question 9: May a duplicate copy of a record of duty status be submitted if an original was seized by an enforcement official?

Guidance: A driver must prepare a second original record of duty status to replace any page taken by an enforcement official. The driver should note that the first original had been taken by an enforcement official and the circumstances under which it was taken.

Question 10: What regulation, interpretation, and/or administrative ruling requires a motor carrier to retain supporting documents and what are those documents?

Guidance: Section 395.8(k)(1) requires motor carriers to retain all supporting documents at their principal places of business for a period of 6 months from date of receipt.

Supporting documents are the records of the motor carrier which are maintained in the ordinary course of business and used by the motor carrier to verify the information recorded on the driver's record of duty status. Examples are: Bills of lading, carrier pros, freight bills, dispatch records, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, port of entry receipts, cash advance receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, CVSA reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business. Supporting documents may include other documents which the motor carrier maintains and can be used to verify information on the driver's records of duty status. If these records are maintained at locations other than the principal place of business but are not used by the motor carrier for verification purposes, they must be forwarded to the principal place of business upon a request by an authorized representative of the FHWA or State official within 2 business days.

Question 11: Is a driver who works for a motor carrier on an occasional basis and who is regularly employed by a non-motor carrier entity required to submit either records of duty status or a signed statement regarding the hours of service for all on-duty time as ''on-duty time'' as defined by § 395.2?

Guidance: Yes.

Question 12: May a driver use ''white-out'' liquid paper to correct a record of duty status entry?

Guidance: Any method of correction would be acceptable so long as it does not negate the obligation of the driver to certify by his or her signature that all entries were made by the driver and are true and correct.

Question 13: Are drivers required to draw continuous lines between the off-duty, sleeper berth, driving, and on-duty (not driving) lines on a record of duty status when changing their duty status?

Guidance: No. Under § 395.8(h) the FMCSRs require that continuous lines be drawn between the appropriate time markers within each duty status line, but they do not require that continuous lines be drawn between the appropriate duty status lines when drivers change their duty status.

Question 14: What documents satisfy the requirement to show a shipping document number on a record of duty status as found in § 395.8(d)(11)?

Guidance: The following are some of the documents acceptable to satisfy the requirement: shipping manifests, invoices/freight bills, trip reports, charter orders, special order numbers, bus bills or any other document that identifies a particular movement of passengers or cargo.

In the event of multiple shipments, a single document will satisfy the requirement. If a driver is dispatched on a trip, which is subsequently completed, and then is dispatched on another trip on that calendar day, two shipping document numbers or two shippers and commodities must be shown in the remarks section of the record of duty status.

Question 15: If a driver from a foreign country only operates in the U.S. one day a week, is he required to keep a record of duty status for every day?

Guidance: A foreign driver, when in the U.S., must produce a current record of duty status, and sufficient documentation to account for his duty time for the previous 6 days.

Question 16: Are drivers required to include their total on-duty time for the previous 7 to 8 days (as applicable) on the driver's record of duty status?

Guidance: No.

Question 17: Can military time be used on the grid portion of the driver's record of duty status?

Guidance: Yes. The references to 9 a.m., 3 p.m., etc. in § 395.8(d)(6) are examples only. Military time is also acceptable.

Question 18: Section 395.8(d)(4) requires that the name of the motor carrier be shown on the driver's record of duty status. If a company owns more than one motor carrier subject to the FMCSRs, may the company use logs listing the names of all such motor carrier employers and require the driver to identify the carrier for which he or she drives?

Guidance: Yes, provided three conditions are met. First, the driver must identify his or her motor carrier employer by a method that would be visible on a photocopy of the log. A dark check mark by the carrier's name would be acceptable. However, a colored highlight of the name would not be acceptable, since these colors are often transparent to photocopiers.

Second, the driver may check off the name of the motor carrier employer only if he or she works for a single carrier during the 24 hour period covered by the log.

Third, if the parent company uses Multiday Logs (Form 139 or 139A), the log for each day must list all motor carrier employers and the driver must identify his or her carrier each day.

Question 19: Regulatory guidance issued by the Office of Motor Carriers states that a driver's record-of-duty-status (RODS) may be used as the 100 air-mile radius time record ''. . . provided the form contains the mandatory information.'' Is this ''mandatory information'' that required of a normal RODS under § 395.8(d) or that of the 100 air-mile radius exemption under § 395.1(e)(5)?

Guidance: The ''mandatory information'' referred to is the time records specified by § 395.1(e)(5) which must show: (1) The time the driver reports for duty each day; (2) the total number of hours the driver is on duty each day; (3) the time the driver is released from duty each day; and (4) the total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

Using the RODS to comply with § 395.1(e)(5) is not prohibited as long as the RODS contains driver identification, the date, the time the driver began work, the time the driver ended work, and the total hours on duty.

Question 20: When a driver fails to meet the provisions of the 100 air-mile radius exemption (§ 395.1(e)), is the driver required to have copies of his/her

records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the 100 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive 10 hours after leaving his/her exempt status, in addition to the hours already driven under the 100 air-mile exemption.

Question 21: What is the carrier's liability when its drivers falsify records of duty status?

Guidance: A carrier is liable both for the actions of its drivers in submitting false documents and for its own actions in accepting false documents. Motor carriers have a duty to require drivers to observe the FMCSRs.

Question 22: If a driver logs his/her duty status as ''driving'' but makes multiple short stops (each less than 15 minutes) for on-duty or off-duty activities, marks a vertical line on the grid for each stop, and records the elapsed time for each in the remarks section of the grid, would the aggregate time spent on those non-driving activities be counted against the 10-hour driving limit?

Guidance: No. On-duty not driving time or off-duty time is not counted against the 10-hour driving limit.

Question 23: When the driver's duty status changes, do §§ 395.8(c) or 395.8(h)(5) require a description of on-duty not driving activities (''fueling,'' ''pre-trip,'' ''loading,'' ''unloading,'', etc.) in the remarks section in addition to the name of the nearest city, town or village followed by the State abbreviation?

Guidance: No. Many motor carriers require drivers to identify work performed during a change of duty status. Part 395 neither requires nor prohibits this practice.

Question 24: When must a driver complete the signature/certification of the driver's record of duty status?

Guidance: In general, the driver must sign the record of duty status immediately after all required entries have been made for the 24-hour period. However, if the driver is driving at the end of the 24-hour period, he/she must sign during the next stop. A driver may also sign the record of duty status upon going off duty if he/she expects to remain off duty until the end of the 24-hour period.

Question 25: Is a driver (United States or foreign) required to maintain a record of duty status (log book) in a foreign country before entering the U.S.?

Guidance: No. The FHWA does not require drivers to prepare records of duty status while operating outside the jurisdiction of the United States. *However,* it may be advantageous for any driver (U.S. or foreign) to prepare records of duty status for short-term foreign trips. Upon entering the U.S., each driver must either: (a) Have in his/her possession a record of duty status current on the day of the examination showing the total hours worked for the prior seven consecutive days, including time spent outside the U.S.; or, (b) Demonstrate that he/she is operating as a ''100 air-mile (161 air-kilometer) radius driver'' under § 395.1(e).

Question 26: If a driver is permitted to use a CMV for personal reasons, how must the driving time be recorded?

Guidance: When a driver is relieved from work and all responsibility for performing work, time spent traveling from a driver's home to his/her terminal (normal work reporting location), or from a driver's terminal to his/her home, may be considered off-duty time. Similarly, time spent traveling short distances from a driver's en route lodgings (such as en route terminals or motels) to restaurants in the vicinity of such lodgings may be considered off-duty time. The type of conveyance used from the terminal to the driver's home, from the driver's home to the terminal, or to restaurants in the vicinity of en route lodgings would not alter the situation unless the vehicle is laden. A driver may not operate a laden CMV as a personal conveyance. The driver who uses a motor carrier's CMV for transportation home, and is subsequently called by the employing carrier and is then dispatched from home, would be on-duty from the time the driver leaves home.

A driver placed out of service for exceeding the requirements of the hours of service regulations may not drive a CMV to any location to obtain rest.

Section 395.13 Drivers Declared Out of Service

Question 1: May a driver operate any motor vehicle, at the direction of the motor carrier, after being placed out of service for an hours of service violation?

Guidance: An out of service order issued under § 395.13 extends only to the operation of CMVs. State procedures may differ.

Question 2: May a driver operating a CMV under a lease arrangement with a motor carrier, after being placed out of service for an hours of service violation, cancel the lease and continue to operate the vehicle as a private personal conveyance?

Guidance: No. Cancellation of a lease does not relieve the driver of the responsibility of complying with the out of service order which prohibits the driver from operating a CMV.

Section 395.15 Automatic On-Board Recording Devices

Question 1: Must a motor carrier maintain a second (back-up copy) of the electronic hours-of-service files, by month, in a different physical location than where the original data is stored if the motor carrier retains the original hours-of-service printout signed by the driver and provides the driver with a copy?

Guidance: No. By creating and maintaining the signed original record-of-duty status printed from the electronic hours-of-service file, the motor carrier has converted the electronic document into a paper document subject to § 395.8(k). That section requires the motor carrier to retain at its principal place of business the records of duty status and supporting documents for a period of 6 months from date of receipt. If the motor carrier did not generate a paper copy of the electronic document and retain a signed original, it would be required to maintain the electronic file and a second (back-up) copy.

Question 2: May a driver who uses an automatic on-board recording device amend his/her record of duty status during a trip?

Guidance: No. Section 395.15(i)(3) requires automatic on-board recording devices, to the maximum extent possible, be tamperproof and preclude the alteration of information collected concerning a driver's hours of service. If drivers, who use automatic on-board recording devices, were allowed to amend their record of duty status while in transit, legitimate amendments could not be distinguished from falsifications. Records of duty status maintained and generated by an automatic on-board recording device may only be amended by a supervisory motor carrier official to accurately reflect the driver's activity. Such supervisory motor carrier official must include an explanation of the mistake in the remarks section of either the original or amended record of duty status. Both the original and amended record of duty status must be retained by the motor carrier.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

Sections Interpreted

396.3 Inspection, Repair, and Maintenance
396.9 Inspection of Motor Vehicles in Operation
396.11 Driver Vehicle Inspection Report(s)
396.13 Driver Inspection
396.17 Periodic Inspection
396.19 Inspector Qualifications
396.21 Periodic Inspection Recordkeeping Requirements
396.23 Equivalent to a Periodic Inspection
396.25 Qualifications of Brake Inspectors

Section 396.3 Inspection, Repair, and Maintenance

Question 1: What is meant by ''systematic inspection, repair, and maintenance''?

Guidance: Generally, systematic means a regular or scheduled program to keep vehicles in a safe operating condition. Section 396.3 does not specify inspection, maintenance, or repair intervals because such intervals are fleet specific and, in some instances, vehicle specific. The inspection, repair, and maintenance intervals are to be determined by the motor carrier. The requirements of §§ 396.11, 396.13, and 396.17 are in addition to the systematic inspection, repair, and maintenance required by § 396.3.

Question 2: Section 396.3(b)(4) refers to a record of tests. What tests are required of push-out windows and emergency door lamps on buses?

Guidance: Generally, inspection of a push-out window would require pushing out the window. However, if the window may be destroyed by pushing out to test its proper functioning, a visual inspection may qualify as a test if the inspector can ascertain the proper functioning of the window without opening it. Checking to ensure that the rubber push-out molding is properly in place and has not deteriorated and that any handles or marking instructions have not been tampered with would meet the test requirement. Inspection of emergency door marking lights would require opening the door to test the lights.

Question 3: Who has the responsibility of inspecting and maintaining leased vehicles and their maintenance records?

Guidance: The motor carrier must either inspect, repair, maintain, and keep suitable records for all vehicles subject to its control for 30 consecutive days or more, or cause another party to perform such activities. The motor carrier is solely responsible for ensuring that the vehicles under its control are in safe operating condition and that defects have been corrected.

Question 4: Is computerized recordkeeping of CMV inspection and maintenance information permissible under § 396.3 of the FMCSRs?

Guidance: Yes, if the minimum inspection, repair, and maintenance records required are included in the computer information system and can be reproduced on demand.

Question 5: Where must vehicle inspection and maintenance records be retained if a vehicle is not housed or maintained at a single location?

Guidance: The motor carrier may retain the records at a location of its choice. If the vehicle maintenance records are retained at a location apart from the vehicle, the motor carrier is not relieved of its responsibility for ensuring that the records are current and factual. In all cases, however, upon request of the FHWA the maintenance records must be made available within a reasonable period of time (2 working days).

Section 396.9 Inspection of Motor Vehicles in Operation

Question 1: Under what conditions may a vehicle that has been placed ''out of service'' under § 396.3 be moved?

Guidance: The vehicle may be moved by being placed entirely upon another vehicle, towed by a vehicle equipped with a crane or hoist, or driven if the ''out of service'' condition no longer exists.

Question 2: Is it the intent of § 396.9 to allow ''out of service'' vehicles to be towed?

Guidance: Yes; however, not all out of service vehicles may be towed away from the inspection location. The regulation sets up a flexible situation that will permit the inspecting officer to use his/her best judgment on a case-by-case basis.

Section 396.11 Driver Vehicle Inspection Report(s)

Question 1: Does § 396.11 require the DVIR to be turned in each day by a driver dispatched on a trip of more than one day's duration?

Guidance: A driver must prepare a DVIR at the completion of each day's work and shall submit those reports to the motor carrier upon his/her return to the home terminal. This does not relieve the motor carrier from the responsibility of effecting repairs and certification of any items listed on the DVIR, prepared at the end of each day's work, that would be likely to affect the safety of the operation of the motor vehicle.

Question 2: Does § 396.11 require that the power unit and the trailer be inspected?

Guidance: Yes. A driver must be satisfied that both the power unit and the trailer are in safe operating condition before operating the combination.

Question 3: May more than one power unit be included on the DVIR if two or more power units were used by a driver during one day's work?

Guidance: No. A separate DVIR must be prepared for each power unit operated during the day's work.

Question 4: Does § 396.11 require a motor carrier to use a specific type of DVIR?

Guidance: A motor carrier may use any type of DVIR as long as the report contains the information and signatures required.

Question 5: Does § 396.11 require a separate DVIR for each vehicle and a combination of vehicles or is one report adequate to cover the entire combination?

Guidance: One vehicle inspection report may be used for any combination, provided the defects or deficiencies, if any, are identified for each vehicle and the driver signs the report.

Question 6: Does § 396.11(c) require a motor carrier to effect repairs of all items listed on a DVIR prepared by a driver before the vehicle is subsequently driven?

Guidance: The motor carrier must effect repairs of defective or missing parts and accessories listed in Appendix G to the FMCSRs before allowing the vehicle to be driven.

Question 7: What constitutes a ''certification'' as required by § 396.11(c)(1) and (2)?

Guidance: A motor carrier or its agent must state, in writing, that certain defects or deficiencies have been corrected or that correction was unnecessary. The declaration must be immediately followed by the signature of the person making it.

Question 8: Who must certify under § 396.11(c) that repairs have been made when a motor vehicle is repaired en route by the driver or a commercial repair facility?

Guidance: Either the driver or the commercial repair facility.

Question 9: Must certification for trailer repairs be made?

Guidance: Yes. Certification must be made that all reported defects or deficiencies have been corrected or that correction was unnecessary. The certification need only appear on the carrier's copy of the report if the trailer is separated from the tractor.

Question 10: What responsibility does a vehicle leasing company, engaged in the daily rental of CMVs, have regarding

the placement of the DVIR in the power unit?

Guidance: A leasing company has no responsibility to comply with § 396.11 unless it is the carrier. It is the responsibility of a motor carrier to comply with part 396 regardless of whether the vehicles are owned or leased.

Question 11: Which carrier is to be provided the original of the DVIR in a trip lease arrangement?

Guidance: The motor carrier controlling the vehicle during the term of the lease (i.e. the lessee) must be given the original of the DVIR. The controlling motor carrier is also responsible for obtaining and retaining records relating to repairs.

Question 12: Must the motor carrier's certification be shown on all copies of the DVIR?

Guidance: Yes.

Question 13: Must a DVIR carried on a power unit during operation cover both the power unit and trailer being operated at the time?

Guidance: No. The DVIR must cover the power unit being operated at the time. The trailer identified on the report may represent one pulled on the preceding trip.

Question 14: In instances where the DVIR has not been prepared or cannot be located, is it permissible under § 396.11 for a driver to prepare a DVIR based on a pre-trip inspection and a short drive of a motor vehicle?

Guidance: Yes. Section 396.11 of the FMCSRs places the responsibility on the motor carrier to require its drivers to prepare and submit the DVIR. If, in unusual circumstances, the DVIR has not been prepared or cannot be located the motor carrier may cause a road test and inspection to be performed for safety of operation and the DVIR to be prepared.

Question 15: Is it permissible to use the back of a record of duty status (daily log) as a DVIR?

Guidance: Yes, but the retention requirements of § 396.11 and § 395.8 must be met.

Question 16: Does § 396.11 require that specific parts and accessories that are inspected be identified on the DVIR?

Guidance: No.

Question 17: Is the Ontario pretrip/posttrip inspection report acceptable as a DVIR under § 396.11?

Guidance: Yes, provided the report from the preceding trip is carried on board the motor vehicle while in operation and all entries required by §§ 396.11 and 396.13 are contained on the reports.

Question 18: Where must DVIRs be maintained?

Guidance: Since § 396.11 is not specific, the DVIRs may be kept at either the motor carrier's principal place of business or the location where the vehicle is housed or maintained.

Question 19: Who is responsible for retaining DVIRs for leased vehicles including those of owner-operators?

Guidance: The motor carrier is responsible for retaining the original copy of each DVIR and the certification of repairs for at least 3 months from the date the report was prepared.

Question 20: Is a multi-day DVIR acceptable under §§ 396.11 and 396.13?

Guidance: Yes, provided all information and certifications required by §§ 396.11 and 396.13 are contained on the report.

Question 21: Is a DVIR required by a motor carrier operating only one tractor trailer combination?

Guidance: No. One tractor semitrailer/full trailer combination is considered one motor vehicle. However, a carrier operating a single truck tractor and multiple semitrailers, which are not capable of being operated as one combination unit, would be required to prepare DVIRs.

Question 22: Are motor carriers required to retain the ''legible copy'' of the last vehicle inspection report (referenced in § 396.11(c)(3)) which is carried on the power unit?

Guidance: No. The record retention requirement refers only to the original copy retained by the motor carrier.

Question 23: Does the record retention requirement of § 396.11(c)(2) apply to all DVIRs, or only those reports on which defects or deficiencies have been noted?

Guidance: The record retention requirement applies to all DVIRs.

Question 24: How would the DVIR requirements apply to a driver who works two or more shifts in a single calendar day?

Guidance: Section 396.11(a) requires every driver to prepare a DVIR at the completion of each day's work on each vehicle operated. A driver who operates two or more vehicles in a 24-hour-period must prepare a DVIR at the completion of the tour of duty in each vehicle.

Question 25: Section 396.11 requires the driver, at the completion of each day's work, to prepare a written report on each vehicle operated that day. Does this section require a ''post trip inspection'' of the kind described in § 396.15?

Guidance: No. However, the written report must include all defects in the parts and accessories listed in § 396.11(a) that were discovered by or reported to the driver during that day.

Question 26: Is the motor carrier official or agent who certifies that defects or deficiencies have been corrected or that correction was unnecessary required to be a mechanic or have training concerning commercial motor vehicle maintenance?

Guidance: No. Section 396.11 does not establish minimum qualifications for motor carrier officials or agents who certify that defects or deficiencies on DVIRs are corrected. With the exception of individuals performing the periodic or annual inspection (§ 396.19), and motor carrier employees responsible for ensuring that brake-related inspection, repair, or maintenance tasks are performed correctly (§ 396.25), Part 396 of the FMCSRs does not establish minimum qualifications for maintenance personnel. Motor carriers, therefore, are not prohibited from having DVIRs certified by company officials or agents who do not have experience repairing or maintaining commercial motor vehicles.

Section 396.13 Driver Inspection

Question 1: If a DVIR does not indicate that certain defects have been repaired, and the motor carrier has not certified in writing that such repairs were considered unnecessary, may the driver refuse to operate the motor vehicle?

Guidance: The driver is prohibited from operating the motor vehicle if the motor carrier fails to make that certification. Operation of the vehicle by the driver would cause the driver and the motor carrier to be in violation of § 396.11(c) and both would be subject to appropriate penalties. However, a driver may sign the certification of repairs as an agent of the motor carrier if he/she is satisfied that the repairs have been performed.

Question 2: At the end of the day's work and upon completion of the required DVIR, what does the driver do with the copy of the previous DVIR carried on the power unit?

Guidance: There is no requirement that the driver submit the copy of that previous DVIR to the motor carrier nor is there a retention requirement for the motor carrier.

Section 396.17 Periodic Inspection

Question 1: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program which has been determined to be as effective as the Federal periodic inspection program, but these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program in

order to meet the Federal periodic inspection requirements?

Guidance: If the State requires all vehicles registered in the State to be inspected through its mandatory program then the motor carrier must go through the State program to satisfy the Federal requirements. If, however, the State inspection program includes an exception or exemption for vehicles which are registered in the State but domiciled outside of the State, then the motor carrier may meet the Federal requirements through a self-inspection, a third party inspection, a CVSA inspection, or a periodic inspection performed in any State with a program that the FHWA determines is comparable to, or as effective as, the part 396 requirements.

Question 2: May the due date for the next inspection satisfy the requirements for the inspection date on the sticker or decal?

Guidance: No. The rule requires that the date of the inspection be included on the report and sticker or decal. This date may consist of a month and a year.

Question 3: Must each vehicle in a combination carry separate periodic inspection documentation?

Guidance: Yes, unless a single document clearly identifies all of the vehicles in the CMV combination.

Question 4: Does the sticker have to be located in a specific location on the vehicle?

Guidance: No. The rule does not specify where the sticker, decal or other form of documentation must be located. It is the responsibility of the driver to produce the documentation when requested. Therefore, the driver must know the location of the sticker and ensure that all information on it is legible and current. The driver must also be able to produce the inspection report if that form of documentation is used.

Question 5: Is new equipment required to pass a periodic inspection under § 396.17?

Guidance: Yes, but a dealer who meets the inspection requirements may provide the documentation for the initial periodic inspection.

Question 6: Are the Federal periodic inspection requirements applicable to U.S. Government trailers operated by motor carriers engaged in interstate commerce?

Guidance: Yes. The transportation is not performed by a governmental entity but by a for-hire carrier in interstate commerce.

Question 7: Does a CMV equipped with tires marked ''Not for Highway Use'' meet the periodic inspection requirements?

Guidance: No. Appendix G to subchapter B—Minimum Periodic Inspection Standards, lists tires so labeled as a defect or deficiency which would prevent a vehicle from passing an inspection.

Question 8: Is a CMV subject to a roadside inspection by State or Federal inspectors if it displays a periodic inspection decal or other evidence of a periodic inspection being conducted in the past 12 months?

Guidance: Yes. Evidence of a valid periodic inspection only precludes a citation for a violation of § 396.17.

Question 9: Is a State required to accept the periodic inspection program of another State having a periodic inspection program meeting minimum FHWA standards as contained in appendix G to the FMCSRs?

Guidance: Yes. Section 210 of the MCSA (49 U.S.C. 31142) establishes the principle that State inspections meeting federally approved criteria must be recognized by every other State.

Question 10: Do vehicles inspected under a periodic Canadian inspection program comply with the FHWA periodic inspection standards?

Guidance: Yes. The FHWA has determined that the inspection programs of all of the Canadian Provinces meet or exceed the Federal requirements for a periodic inspection program.

Question 11: Must a specific form be used to record the periodic inspection mandated by § 396.17?

Guidance: No. Section 396.21 does not designate any particular form, decal, or sticker, but does specify the information which must be shown on these documents.

Question 12: May an inspector certify a CMV as meeting the periodic inspection standards of § 396.17 if he/she cannot see all components required to be inspected under appendix G?

Guidance: No. The affixing of a decal or sticker or preparation of a report as proof of inspection indicates compliance with all requirements of appendix G to part 396.

Question 13: If an intermodal container is attached to a chassis at the time of a periodic inspection, must the container also be inspected to comply with § 396.17 inspection requirements?

Guidance: Yes. Safe loading is one of the inspection areas covered under appendix G. If the chassis is loaded at the time of inspection, the method of securement of the container to the chassis must be included in the inspection. Although integral securement devices such as twist locks are not listed in appendix G, the operation of these devices must be included in the inspection without removal of the container.

Question 14: Is it acceptable for the proof of periodic inspection to be written in Spanish?

Guidance: Yes. There is no requirement under § 396.17, or appendix G to subchapter B that the proof of periodic inspection be written in English.

Section 396.19 Inspector Qualifications

Question 1: May an entity other than a motor carrier maintain the evidence of inspector qualifications required by § 396.19(b)?

Guidance: Yes. In those cases in which the inspection is performed by a commercial garage or similar facility or a leasing company, the motor carrier may allow the commercial garage or leasing company to maintain a copy of the inspector's qualifications on behalf of the motor carrier. The motor carrier, however, is responsible for obtaining copies of evidence of the inspector's qualifications upon the request of Federal, State, or local officials. If, for whatever reason, the motor carrier is unable to obtain this information from the third party, the motor carrier may be cited for noncompliance with § 396.19.

Question 2: Is there a specific form or format to be used in ensuring that inspectors are qualified in accordance with § 396.19?

Guidance: No. Section 396.19(b) requires the motor carrier to retain evidence satisfying the standards without specifying any particular form.

Section 396.21 Periodic Inspection Recordkeeping Requirements

Question 1: What recordkeeping requirements under § 396.21 is a carrier subject to when it utilizes an FHWA-approved State inspection program?

Guidance: The motor carrier must comply with the recordkeeping requirements of the State. The requirements specified in § 396.21 (a) and (b) are applicable only in those instances where the motor carrier self-inspects its CMVs or has an agent perform the periodic inspection.

Section 396.23 Equivalent to a Periodic Inspection

Question 1: Is a CVSA Level I or Level V inspection a ''State * * * roadside inspection program'' through which a motor carrier may meet the periodic inspection requirements of § 396.17? If so, what evidence of inspection is required?

Guidance: A CVSA Level I or Level V inspection is equivalent to the Federal periodic inspection requirements. A

CMV that passes such an inspection has therefore met § 396.17, *unless* the vehicle is subject to a mandatory State inspection program that the FHWA has determined is comparable to, or as effective as, the Federal requirements [see § 396.23(b)(1)]. A CVSA decal displayed on the CMV, or a copy of the Level I or Level V inspection report maintained in the vehicle, constitutes sufficient evidence of inspection.

Section 396.25 Qualifications of Brake Inspectors

Question 1: Does a CDL with an airbrake endorsement qualify a person as a brake inspector under § 396.25?

Guidance: No.

Question 2: May a driver who does not have the necessary experience perform the adjustment under directions issued by telephone by a qualified inspector?

Guidance: Yes. A driver is permitted to perform brake adjustments at a roadside inspection providing they are done under the supervision of a qualified brake adjuster and the carrier is willing to assume responsibility for the proper adjustment.

Question 3: May a driver or other motor carrier employee be qualified as a brake inspector under § 396.25 by way of experience or training to perform brake adjustments without being qualified to perform other brake-related tasks such as the repair or replacement of brake components?

Guidance: Yes. A driver may be qualified by the motor carrier to perform a limited number of tasks in connection with the brake system, e.g., inspect and/or adjust the vehicle's brakes, but not repair them.

Question 4: Would a mechanic who is employed by a leasing company and only works on CMVs that the leasing company leases to other motor carriers be required to meet the brake inspector certification requirements?

Guidance: No. The mechanic is not required to meet the certification requirements of § 396.25(d) since he/she is not employed by a motor carrier.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

Sections Interpreted

397.1 Application of the Rules in This Part
397.5 Attendance and Surveillance of Motor Vehicles
397.7 Parking
397.9 Routes
397.13 Smoking

Section 397.1 Application of the Rules in This Part

Question 1: Who is subject to part 397?

Guidance: Part 397 applies to motor carriers that transport HM in interstate commerce in types and quantities requiring marking or placarding under 49 CFR 177.823. The routing requirements of part 397 establish guidelines State and Indian tribal routing agencies must employ in designating and/or restricting routes for the transportation of HM. Interstate motor carriers transporting HM, in interstate or intrastate commerce, must comply with the designations and restrictions established by the routing agencies.

Question 2: Is the interstate transportation of anhydrous ammonia, in nurse tanks, subject to part 397?

Guidance: The requirements of part 397 do not apply to the direct application of ammonia to fields from nurse tanks. However, part 397 does apply to the transportation of nurse tanks on public highways, when performed by interstate motor carriers.

Section 397.5 Attendance and Surveillance of Motor Vehicles

Question 1: What defines a ''public highway'' or ''shoulder'' of a public highway for the purpose of determining violations under § 397.5(c)?

Guidance: The applicable engineering/highway design plans.

Question 2: Must a driver of a motor vehicle transporting HM, other than Division 1.1, 1.2, or 1.3 (Class A or B) explosives, always maintain an unobstructed view and be within 100 feet of that vehicle?

Guidance: No. If the vehicle is not located on a public street or highway or on the shoulder of a public highway, then the vehicle need not be within 100 feet of the driver's unobstructed view, unless it contains Division 1.1, 1.2, or 1.3 (Class A or B) materials.

Question 3: May a motor carrier consider fuel stop operators as ''qualified representative(s)'' for purposes of the attendance and surveillance requirements of § 397.5?

Guidance: Yes. However, the fuel stop operator must be able to perform the required functions.

Question 4: Who determines what is a ''safe haven''?

Guidance: The selection of safe havens is a decision of the ''competent government authorities'' having jurisdiction over the area. The definition found in § 397.5(d)(3) is purposely void of any specific guidelines or criteria. A truck stop may be considered a safe haven if it is so designated by local or State governmental authorities.

Question 5: Section 397.5(d)(3) describes a safe haven as ''* * * an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials.'' Do guidelines exist for establishing approval criteria for safe havens? Is there a national list of approved safe havens available to the public?

Guidance: The FHWA believes the safe haven concept is becoming increasingly obsolete due to readily available alternatives for providing ''attendance at all times'' for vehicles laden with explosives. The FHWA is aware of two documents that may be used as resources for establishing approval criteria for safe havens. The first document, *Construction and Maintenance Procedure Recommendations for Proposed Federal Guidelines of Safe Havens for Vehicles Carrying Class A or Class B Explosives* (1985), contains design, construction, and maintenance guidelines. The second document, *Recommended National Criteria for the Establishment and Operation of Safe Havens* (1990), contains recommended national uniform criteria for approval of safe havens and an inventory of all State-approved safe havens in existence at the time of the report. These two documents may be used both as resources for establishing guidelines for safe haven design and construction, and as source documents for finding other materials that may be used toward the same purpose. These two documents are available to the public through the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161 (phone: (703) 487–4650). The NTIS publications database is also accessible on the internet's world wide web at

http://www.fedworld.gov/ntis.

Question 6: May video monitors be used to satisfy the attendance requirements in § 397.5?

Guidance: The purpose of the attendance requirement is to ensure that motor vehicles containing hazardous materials are attended at all times and that, in the event of an emergency involving the motor vehicle, the attendant is able to respond immediately. The use of video monitors could satisfy the attendance requirements in § 397.5, provided the monitors are operable and continuously manned, the attendant is within 30.48 meters (100 feet) of the parked vehicle with an unobstructed view, and the attendant is able to go to the vehicle immediately from the monitoring location.

Section 397.7 Parking

Question 1: When is a vehicle considered ''parked''?

Guidance: For the purposes of part 397, ''parked'' means the vehicle is stopped for a purpose unrelated to the driving function, (e.g., fueling, eating, loading, unloading).

Question 2: What constitutes ''knowledge and consent of the person in charge,'' as used in § 397.7(a)(2)?

Guidance: In order to satisfy the requirement for ''knowledge and consent,'' actual notice of ''the nature of the hazardous materials the vehicle contains'' must be given to the person in charge, and that person must affirmatively agree to allow the vehicle to be parked on the property under his/her control.

Question 3: Is the motor carrier or driver relieved from the requirements of § 397.7(a)(3) if the person in charge of the private property is notified of the explosive HM contained in the vehicle?

Guidance: No. A vehicle transporting Division 1.1, 1.2, or 1.3 (Class A or B) explosives must meet the 300-foot separation requirement, regardless of any notification made to any person.

Question 4: What is meant by the term ''brief periods when necessities of operation require * * *'' in § 397.7(a)(3)?

Guidance: Brief periods of time depend upon the ''necessities of operation'' in question. Parking a vehicle containing Division 1.1, 1.2, or 1.3 (Class A or B) materials closer than 300 feet to buildings, dwellings, etc. for periods up to 1 hour for a driver to eat would not be permitted under the provisions of § 397.7(a)(3). Parking at fueling facilities to obtain fuel, oil, etc., or at a carrier's terminal would be considered necessities of operation.

Question 5: May a safe haven be designated within 300 feet of an area where buildings and other structures are likely to be occupied by large numbers of people?

Guidance: The selection and designation of safe havens are a decision of the ''competent government authorities'' having jurisdiction over the area.

Question 6: If a motor vehicle is transporting Division 1.1, 1.2, or 1.3 (Class A or B) explosives and is parked in a safe haven, must it be in compliance with the parking requirements of § 397.7?

Guidance: Yes. Safe havens, as outlined in § 397.5, relate to attendance and surveillance requirements. The parking restrictions of § 397.7 still apply.

Question 7: May a driver transporting Division 1.1, 1.2, or 1.3 (Class A or B) materials park within 100 feet of an eating establishment in order to meet the attendance and surveillance requirements?

Guidance: No, because it will result in a violation of § 397.7(a)(3).

Section 397.9 Routes

Question 1: May a motor vehicle which contains HM use expressways or major thoroughfares to make deliveries within a populated area?

Guidance: Yes, unless otherwise specifically prohibited by State or local authorities. In many instances a more circuitous route may present greater hazards due to increased exposure. However, in those situations where a vehicle is passing through a populated or congested area, use of a beltway or other bypass would be considered the appropriate route, regardless of the additional economic burden.

Section 397.13 Smoking

Question 1: May a driver of a CMV transporting HM, listed in § 397.13, smoke while at the controls or in the sleeper berth of the vehicle?

Guidance: No. All persons are prohibited from smoking or carrying lighted smoking materials at any time while on or within 25 feet of such a vehicle. The word ''on'' includes any time while in the cab, sleeper berth, etc.

PART 399—EMPLOYEE SAFETY AND HEALTH STANDARDS

Sections Interpreted

399.207 Truck and Truck-Tractor Access Requirements

Section 399.207 Truck and Truck-Tractor Access Requirements

Question 1: If a high-profile COE truck or truck-tractor is equipped with a seat on the passenger's side, must steps and handholds be provided for any person entering or exiting on that side of the vehicle?

Guidance: Yes, all high-profile COE trucks and truck tractors shall be equipped on each side of the vehicle where a seat is located, with a sufficient number of steps and handholds to comply with the requirements of § 399.207(a).

Question 2: What does the foot accommodation rule mean when it states: ''The step need not retain the disc at rest''?

Guidance: The note under § 399.207(b)(4) states that the disc referred to is a measuring device. The step or rung does not have to be configured in such a manner as to keep the measuring disc from falling off the step or rung.

Question 3: In § 399.207(b)(4), Illustration III, what does the unshaded area within the disc suggest?

Guidance: The unshaded area illustrates the height of the open area required for a driver to insert his or her foot.

Question 4: May the step be a rung? If so, what minimum diameter must the rung be?

Guidance: Yes, the step may be a rung. There is no minimum requirement for the diameter of a step rung. However, it must meet the performance requirements in § 399.207(b)(5).

(5 U.S.C. 553(b); 49 CFR 1.48)

Issued on: March 27, 1997.

Jane F. Garvey,

Acting Administrator, Federal Highway Administration.

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Friday
April 4, 1997

Part IV

Department of Agriculture

Agricultural Research Service

Cooperative State Research, Education, and Extension Service

Biotechnology Risk Assessment Research Grants Program; FY 1997 Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Cooperative State Research, Education, and Extension Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1997 Solicitation of Applications

AGENCY: Agricultural Research Service; Cooperative State Research, Education, and Extension Service.

ACTION: Notice of biotechnology risk assessment research grants program; Fiscal year 1997 solicitation of applications.

SUMMARY: Applications are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program (the ''Program'') for fiscal year (FY) 1997. The authority for the Program is contained in section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5921). The Program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture.

FOR FURTHER INFORMATION CONTACT: Dr. Edward K. Kaleikau, USDA/CSREES, (202) 401–1901, or Dr. Robert M. Faust, USDA/ARS, (301) 504–6918.

SUPPLEMENTARY INFORMATION: The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing into the environment genetically modified organisms, including plants, microorganisms, fungi, bacteria, viruses, arthropods, fish, birds, mammals and other animals. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research that it funds. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered.

Applicant Eligibility

Proposals may be submitted by any United States public or private research or educational institution or organization.

Available Funding

Subject to the availability of funds, the anticipated amount available for support of the Program in FY 1997 is $1.5 million.

Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997 (Pub. L. 104–180), prohibits CSREES from using the funds available for FY 1997 to pay indirect costs exceeding 14 percent of the total Federal funds provided under each award on competitively awarded research grants.

In addition, pursuant to section 716 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities are encouraged to use such funds to purchase only American-made equipment or products.

Program Description

CSREES and ARS will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and help regulators in developing policies regarding such introduction.

The Program's research emphasis is on risk assessment and not risk management. The Program defines risk assessment research as the science-based evaluation and interpretation of factual information in which a given hazard, if any, is identified, and the consequences associated with the hazard are explored. The Program defines risk management as primarily a policy and decision-making process that uses risk assessment data in deciding how to avoid or mitigate the consequences identified in a risk assessment. Proposals must be relevant to risk assessment to be eligible for this Program.

Proposals must include a statement describing the relevance of the proposed project to one or more of the topics requested in this solicitation. In addition, proposals must include detailed descriptions of the experimental design and appropriate statistical analyses to be done. The Program strongly encourages the inclusion of statisticians and risk analysis researchers as co-principal investigators or contractors.

Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research deemed not appropriate to risk assessment.

Proposal Evaluation

Proposals will be evaluated by the Administrator assisted by a peer panel of scientists for scientific merit, qualifications of project personnel, adequacy of facilities, and relevance to both risk assessment research and regulation of agricultural biotechnology.

Areas of Research To Be Supported in Fiscal Year 1997

Proposals addressing the following topics are requested:

1. Research on the introduction into the environment (not in a contained facility) of genetically engineered organisms. The data collected may include: Survival; reproductive fitness; genetic stability; horizontal gene transfer; loss of genetic diversity; or enhanced competitiveness. The organisms may include: fungi; bacteria; viruses; microorganisms; plants; arthropods; fish; birds; mammals; and other animals.

2. Research on the potential for recombination between plant viruses and plant-encoded viral transgenes. Such studies should identify sequences that may be prone to recombinational events, factors that affect frequency of recombination, and factors, including host factors, that may affect a recombinant virus in out-competing a wild-type virus. Comparisons of recombination frequencies between naturally occurring viral sequences and virus and viral transgenes are encouraged.

3. Research on the potential for nontarget effects of introduced plant-defense compounds expressed in genetically modified plant-associated microorganisms (e.g., compounds in the phyllosphere or rhizosphere-inhabiting bacteria) or in plants (e.g., *Bacillus thuringiensis* delta-endotoxin), especially in regard to persistence of the organisms and material in the environment.

4. Research on large-scale deployment of genetically engineered organisms; especially commercial uses of such organisms, with special reference to considerations that may not be revealed through small-scale evaluations and tests. This may include monitoring locations where transgenic virus resistant plants (expressing viral transgenes) are grown on a commercial scale or in large-scale production for viral strains which overcome the resistance phenotype. The analysis of resistance-breaking strains should include analyzing whether the strain arose via recombination between viral transgenes and the viral genome. Such projects should survey the production sites for two to three years.

5. The Program will, subject to resource availability, provide partial funding to organize a scientific research conference that brings together scientists and regulators, to review the research evidence, if any, that the

introduction of a pest resistance gene into a crop plant increases the weediness of the crop plant or of sexually compatible plants. The conference should provide an opportunity to address how experiments could be designed to test whether a pest resistance gene increases the weediness of the plant in the field. The scientific steering committee for the conference should include a broad representation of disciplines, including ecology, population biology, plant pathology, entomology, plant breeding, and others as appropriate.

6. Funding will be available to develop and make publicly available, information about statistical and monitoring approaches for field testing of genetically modified organisms.

Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include but are not limited to:

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations.

Programmatic Contact

For additional information on the Program, please contact:

Dr. Edward K. Kaleikau, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2241, 1400 Independence Avenue, SW., Washington, DC. 20250–2241, Telephone: (202) 401–1901, or

Dr. Robert M. Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 338, Building 005, BARC-West, Beltsville, MD 20705, Telephone: (301) 504–6918

How To Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR part 3415), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, SW., Washington, DC. 20250–2245, Telephone Number: (202) 401–5048.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 1997 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

The format guidelines for full research proposals, found in the administrative provisions for the Program at § 3415.4(d), should be followed for the preparation of proposals under the Program in FY 1997. (Note that the Department elects not to solicit preproposals in FY 1997.)

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 and 7 CFR part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES and ARS so that CSREES and ARS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES and ARS Categorical Exclusions (7 CFR 3407.6 and 7 CFR 520.5)

Based on previous experience, the following categories of CSREES and ARS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small, isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES and ARS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as ''NEPA Considerations'' and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSREES and ARS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals submitted through First Class mail *must be POSTMARKED BY May 16, 1997,* and sent to the following address: Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, SW., Washington, DC 20250–2245, Telephone: (202) 401–5048.

Hand-delivered proposals, including those submitted by express mail or a courier service, *must be received at the following address by May 16, 1997* (note that the zip code differs from that shown above): Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048.

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, on this 21st day of March 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

E.B. Knipling,

Acting Administrator, Agricultural Research Service.

[FR Doc. 97–8535 Filed 4–3–97; 8:45 am]

BILLING CODE 3410–22–M

Federal Register

Friday
April 4, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guidline for the Preclinical Testing of Biotechnology-Derived Pharmaceuticals; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0113]

International Conference on Harmonisation; Draft Guideline for the Preclinical Testing of Biotechnology-Derived Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled ''Guideline for the Preclinical Testing of Biotechnology-Derived Pharmaceuticals.'' The draft guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to provide general principles for the design of internationally acceptable preclinical safety evaluation programs for biopharmaceuticals.

DATES: Written comments by June 3, 1997.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft guideline may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0379.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on November 7, 1996, the ICH Steering Committee agreed that a draft guideline entitled ''Guideline for the Preclinical Testing of Biotechnology-Derived Pharmaceuticals'' should be made available for public comment. The draft guideline is the product of the Safety Expert Working Group of the ICH. Comments on this draft will be considered by FDA and the Safety Expert Working Group.

The draft guideline recommends a basic framework for the preclinical safety testing of biotechnology-derived pharmaceutical products. Adherence to the preclinical safety testing principles presented in the guideline will allow for continual improvement in the quality and consistency of data supporting the development of biopharmaceuticals.

Although not required, FDA has in the past provided a 75- or 90-day comment period for draft ICH guidelines. However, the comment period for this guideline has been shortened to 60 days so that comments may be received by FDA in time to be reviewed and then discussed at a July 1997 ICH meeting involving this guideline.

This guideline represents the agency's current thinking on preclinical testing of biotechnology-derived pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before June 3, 1997, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guideline is available via Internet by using the World Wide Web (WWW). To connect to the CDER home page, type http://www.fda.gov/cder and go to the ''Regulatory Guidance'' section. To connect to CBER's WWW site, type http://www.fda.gov/cber/cberftp.html.

The text of the draft guideline follows:

Preclinical Testing of Biotechnology-Derived Pharmaceuticals

1. Introduction

1.1 Objectives

Regulatory standards for biotechnology-derived pharmaceutical products/biopharmaceuticals have generally been comparable among the United States, Europe, and Japan. All regions appear to have a flexible, case-by-case, science-based approach to preclinical safety evaluation needed to support clinical development and marketing authorization. For a case-by-case philosophy to succeed in a harmonized way, there is a need for a common understanding among the regions.

Biotechnology-derived pharmaceutical products were initially developed in the early 1980's. The first marketing authorizations were granted later in the decade, followed soon after by the adoption of the first pharmacopeial monographs. Since this time considerable experience has been gathered. Critical review of this experience has been the basis for development of this guidance which is intended to help provide the general principles for design of internationally acceptable preclinical safety

evaluation programs for biopharmaceuticals. The principles in this guidance should be implemented in a flexible way.

The primary goals of preclinical safety evaluation are: (1) To identify an initial safe starting dose and subsequent dose escalation scheme in humans; (2) to identify potential target organs for toxicity and possible reversibility; and (3) to identify parameters for clinical monitoring. Adherence to the principles presented in this document will allow for continual improvement in the quality and consistency of the data supporting the development of biopharmaceuticals.

1.2 Background

Several guidelines and points-to-consider documents are available from the various regulatory agencies regarding the assessment of biotechnology-derived pharmaceutical products. Review of such documents may provide useful background data in developing new products.

1.3 Scope

This guideline recommends a basic framework for the preclinical safety testing of biotechnology-derived pharmaceutical products. It applies to products derived from characterized cells through the use of a variety of expression systems including bacteria, yeast, insect, plant, and mammalian cells. The intended indications may include in vivo diagnostic, therapeutic, or prophylactic uses. The active substances include proteins and peptides, their derivatives and products of which they are components; they could be derived from cell cultures or produced using recombinant DNA technology. Examples include but are not limited to: Cytokines, plasminogen activators, recombinant blood plasma factors, growth factors, hormones, and monoclonal antibodies.

Some of the following guidance may also be applicable to recombinant DNA protein vaccines, chemically synthesized peptides, blood plasma extracted factors, endogenous proteins extracted from human tissue, and oligonucleotide drugs.

This document does not cover antibiotics, allergenic extracts, heparin, vitamins, cellular blood components, conventional bacterial or viral vaccines, DNA vaccines, and cellular and gene therapies.

2. Safety and specification of the test material

Biotechnology-derived pharmaceutical products may have potential risks associated with host cell contaminants from bacteria, yeast, insect, plant, and mammalian cell sources. The presence of cellular host contaminants can result in allergic reactions and other immunopathological effects. The adverse effects associated with nucleic acid contaminants are theoretical and include potential integration into the host genome. For products derived from insect, plant, or mammalian cells or transgenic animals, there may be the additional risk of viral infections. These issues are not covered in this document but they are addressed elsewhere (Note 1). Safety concerns may arise from the presence of impurities or contaminants. It is preferable to rely on purification processes to remove impurities and contaminants rather than to establish a preclinical testing program for their qualification. In all cases, the product should be sufficiently characterized to allow an appropriate design of preclinical studies.

In general, the product used in the definitive pharmacology, toxicology, absorption, distribution, metabolism, and excretion (ADME) studies should be comparable to the product proposed for the initial clinical studies. However, it is appreciated that during the course of development programs, changes normally occur in the manufacturing process in order to improve product quality and yields. The potential impact of such changes for extrapolation of the animal findings to humans should be considered.

In order to allow the timely use of the product made by a new or modified manufacturing process in an ongoing development program, the comparability of the test material should be demonstrated throughout development on the basis of biochemical and biological characterization (i.e., identity, purity, stability, and potency). In some cases additional studies may be needed to assure product comparability (e.g., pharmacokinetics). The scientific rationale for the approach taken should be provided.

3. Preclinical testing

3.1 General principles

The objectives of the preclinical studies are to define pharmacological and toxicological effects not only prior to initiation of human studies but throughout clinical development. Both in vitro and in vivo studies can contribute to this characterization. Biopharmaceuticals structurally and pharmacologically comparable to a product for which there is wide experience in clinical practice may, under certain conditions, need less extensive toxicity testing, especially if a similar kinetic profile has been demonstrated.

Preclinical models should consider: (1) Selection of the animal species and physiological state and (2) the manner of delivery, including dose, route of administration, and treatment regimen.

Pivotal toxicology studies are expected to be performed in compliance with Good Laboratory Practices (GLP's). However, it is recognized that some specialized test systems often needed for biopharmaceuticals may not be able to comply fully. Areas of noncompliance should be identified and their significance evaluated relative to the overall safety assessment. In some cases, a lack of overall GLP compliance does not necessarily mean that the data from these studies cannot be used to support clinical trials and marketing authorizations.

Conventional approaches to toxicity testing of pharmaceuticals may not be appropriate for biopharmaceuticals due to the unique and diverse structural and biological properties of the latter which may include species specificity, immunogenicity, and unpredicted pleiotropic activities.

3.2 Biological activity/pharmacodynamics

Biological activity may be evaluated using in vitro assays to determine effects of the product which are related to clinical activity. The use of cell lines and/or primary cell cultures can be useful to examine the direct effects on cellular phenotype and proliferation. Due to the species specificity of many biotechnology-derived pharmaceutical products, it is important to select an appropriate animal species for toxicity testing. In vitro cell lines from mammalian cells can be used to predict specific aspects of in vivo activity. Such studies may be designed to determine for example, receptor occupancy, receptor affinity, and/or pharmacological effects, and to assist in the selection of an appropriate animal species for further in vivo pharmacology and toxicology studies. The combined results from in vitro and in vivo studies will assist in the extrapolation of the findings to humans. In vivo studies to assess pharmacological activity, including defining mechanism(s) of action, are often used to support the rationale of the proposed product in clinical studies.

For monoclonal antibodies, the immunological properties of the antibody should be described in detail, including its antigenic specificity, complement binding, and any unintentional reactivity and/or cytotoxicity towards human tissues distinct from the intended target. Testing to include such cross-reactivity should be carried out by appropriate immunohistochemical procedures using a range of human tissues.

3.3 Animal species/model selection

The pharmacological activity together with species and/or tissue specificity of many biotechnology-derived pharmaceutical products often preclude standard toxicology testing designs in commonly used species (e.g., rats and dogs). Safety evaluation programs will normally include two relevant species. In certain situations one relevant species may suffice. In these cases the rationale should be provided.

Toxicology studies in pharmacologically nonrelevant species are not needed and are discouraged. However, if in vitro preclinical studies have not identified a relevant animal species, due to the unique species restriction to human cells, it may still be prudent to assess some aspects of potential toxicity in a limited toxicity evaluation in a single species (e.g., a repeated dose toxicity study of < 14 days duration) including the evaluation of important functional endpoints (e.g., cardiovascular, respiratory).

Alternative approaches, when no relevant species exist, may include the use of transgenic animals expressing the human receptor or the use of homologous proteins. The information gained from use of a transgenic species expressing the human receptor is optimized when the interaction of the product and the humanized receptor has physiological consequences similar to those expected in humans. While useful information may also be gained from the use of homologous proteins, it should be noted that the production process, range of impurities/contaminants, pharmacokinetics, and exact pharmacological mechanism(s) may differ between the homologous form and the product intended for clinical use.

In recent years, there has been much progress in the development of animal models that are thought to be similar to the

disease to be treated in humans. These animal models include spontaneous disease models or spontaneous models of disease. These models may provide further insight, not only in determining the pharmacological action of the product, pharmacokinetics, and dosimetry, but may also be useful in the determination of safety (e.g., evaluation of undesirable promotion of disease progression). In certain cases, studies in animal models of disease may be used as an acceptable alternative to toxicology studies in normal animals. The scientific justification for the use of these animal models of disease to support safety should be provided (Note 2).

3.4 Number/gender of animals

The number of animals used per dose has a direct bearing on the ability to detect toxicity. A small sample size may lead to a failure to observe toxic events due to observed frequency alone regardless of severity. The limitations imposed by sample size, as often is the case for nonhuman primate studies, may be in part compensated by increasing the frequency and duration of monitoring. Both genders should generally be used or justification given for specific omissions.

3.5 Administration/dose selection

The route and frequency of administration should be as close as possible to the proposed clinical use and should also take into account the pharmacokinetics and bioavailability of the product in the species being used, and the volume which can safely and humanely be administered to the test animals. For example, the frequency of administration in laboratory animals may be increased compared to the proposed schedule for the human clinical studies in order to compensate for faster clearance rates or low solubility of the active ingredient. In these cases, the level of test animal exposure relative to the clinical exposure should be presented. Considerations should be given to the effects of volume of the administered dose, size of the animal species, and muscle mass, on the absorption of products into the systemic circulation. The use of routes of administration other than those used clinically may be acceptable if the route must be modified due to limited bioavailability, limitations due to the route of administration, or size/physiology of the animal species.

Ideally, dose levels should be selected to provide information on a dose-response relationship, a toxic dose, and a no observed adverse effect level (NOAEL). For some classes of products with little to no toxicity it may not be possible to define a specific maximum dose. In these cases, a strong scientific justification of the rationale for the dose selection and projected multiples of human exposure should be provided. To justify high dose selection, consideration should be given to the expected pharmacological/physiological effects, availability of suitable test material, and the intended clinical use. Where a product has a lower affinity or potency in the cells of the target species than in human cells, testing of higher doses may be important. The multiples of the human dose necessary to determine adequate safety margins may vary with each class of biotechnology-derived pharmaceutical product and its clinical indication(s).

3.6 Immunogenicity

It is likely that many biotechnology-derived pharmaceutical products will be immunogenic in animals. Therefore, measurement of antibodies associated with administration of these types of products should be performed when conducting repeated dose toxicity studies in order to aid in the interpretation of these studies. Antibody responses should be characterized (e.g., neutralizing or non-neutralizing), and their appearance should be correlated with any pharmacological and/or toxicological changes. Specifically, the effects of antibody formation on pharmacokinetic/pharmacodynamic characteristics, incidence and/or severity of adverse effects, or the emergence of new toxic effects, should be considered when interpreting the data.

The detection of antibodies should not be the sole criterion for the early termination of a preclinical study or modification in the duration of the study design unless the immune response neutralizes the pharmacological and/or toxicological effect in a large proportion of the animals. In most cases, the immune response to recombinant proteins is variable, like that observed in humans. Specific attention should be paid to the evaluation of possible pathological changes related to immune complex formation and deposition. If the interpretation of the data from the safety study is not compromised by these issues, then no special significance should be ascribed to the antibody response.

The significance of antibody formation in animals to the potential for antibody formation in humans is often questionable. Humans develop serum antibodies even against humanized proteins, and frequently the therapeutic response persists in their presence. The occurrence of severe anaphylactic responses to recombinant proteins is rare in humans. In this regard, the results of guinea pig anaphylaxis tests, which are generally positive for protein products, are not predictive for humans. Therefore, such studies are considered of little value for these types of products.

4. Specific considerations

4.1 Safety pharmacology

It is important to investigate the potential for undesirable pharmacological activity in appropriate animal models and, where necessary, to incorporate particular monitoring for this activity in the toxicity studies and/or clinical studies. Safety pharmacology studies provide functional indices of toxicity. These functional indices may be investigated in separate studies or incorporated into the design of the toxicology studies. The aim of the safety pharmacology studies should be to establish the functional effects on the major physiological systems. Investigations may include use of isolated organs or other test systems not involving intact animals. The evaluation of function of specific organ systems (e.g., cardiovascular, respiratory, CNS, and autonomic nervous systems, and the renal system) depends on the pharmacological properties of the product. Such studies should allow for a mechanistically-based explanation of specific organ toxicities which should be considered carefully with respect to human use and indication(s).

4.2 Toxicokinetics and pharmacokinetics (Absorption, Distribution, Metabolism, Excretion—ADME)

Toxicokinetics and pharmacokinetics should follow relevant ICH guidelines (Note 1). It is difficult to establish uniform guidelines for ADME studies for biotechnology-derived pharmaceutical products. Single dose pharmacokinetics and tissue distribution studies are often useful; however, routine studies that attempt to assess mass balance, accumulation, and excretion are not useful. Differences in ADME among animal species may have significant impact on the predictiveness of animal studies or on the assessment of dose-response relationships in toxicology studies. Alterations in the pharmacokinetic profile due to immune-mediated clearance mechanisms may affect the ADME profiles and the interpretation of the toxicity data. ADME studies should, whenever possible, utilize test material that is representative of that intended for clinical use using a route of administration relevant to the anticipated clinical studies.

4.2.1 Assays

The use of one or more assay methods should be addressed on a case-by-case basis and the scientific rationale should be provided. One validated assay method is usually considered sufficient. For example, quantitation of TCA-precipitable radioactivity following administration of a radiolabeled protein may provide adequate information, but a specific assay for the analyte is preferred. It is important to show that the radiolabeled test material administered maintains equivalent activity and biological properties to the unlabeled compound. Ideally the assay methods should be the same for animals and humans. The possible influence of plasma binding proteins and/or antibodies on the assay performance should be determined.

4.2.2 Animal species selection

Relevant animal species should be selected to retain comparability of the data with data obtained from pharmacology and toxicology studies.

4.2.3 Absorption

Absorption and/or bioavailability should be characterized in relation to the proposed route of clinical administration. Absorption studies may be performed in conjunction with toxicology studies. Patterns of absorption may be influenced by formulation and/or volume. Some information on disposition in relevant animal models should be available prior to clinical studies in order to project expected margins of safety based upon exposure and dose.

4.2.4 Distribution

Studies of extravascular distribution and mechanisms of clearance may be useful in understanding pharmacological and toxicological properties. Tissue levels of

radioactivity and/or autoradiography data from iodinated proteins may be difficult to interpret with rapid in vivo metabolism and ensuing deiodination. Care should be taken in the interpretation of studies using radioactive tracers incorporated into specific amino acids because of recycling of radiolabeled amino acids into non-drug related proteins/peptides.

4.2.5 Metabolism

Metabolic pathways for biotechnology-derived pharmaceutical products are less complex than for conventional pharmaceuticals and therefore major species differences in metabolic profiles are not an issue.

Metabolite/disposition patterns can be discerned by a range of detection techniques (e.g., immunochemical detection, chromatographic separation, SDS–PAGE).

4.2.6 Excretion

Several organ systems and mechanisms may contribute to the elimination of biotechnology-derived pharmaceutical products. When feasible, these studies should characterize the rate and contribution of the various organs to the overall elimination process.

4.3 Single dose toxicity studies

Single dose studies may generate useful data to describe the relationship of dose to systemic and/or local toxicity. These data can be used to select doses for repeated dose toxicology studies. Data on dose-response relationships may be gathered as a component of pharmacology or animal model efficacy studies or through the conduct of a single dose toxicology study.

4.4 Repeated dose toxicity studies

For consideration of the selection of animal species for repeated dose studies see section 3.3. The route and dosing regimen (e.g., daily versus intermittent dosing) should reflect the intended clinical use or exposure. When feasible, these studies should include toxicokinetics.

A recovery period should generally be included in study designs to determine reversal, potential worsening of pharmacological/toxicological effects, and/or potential delayed toxic effects.

The duration of repeated dose studies should be based on the intended duration of clinical exposure and disease indication. This duration has generally been 1–3 months for most biotechnology-derived products. For products intended for short-term use (e.g., ≤ to 7 days) and for acute life-threatening diseases, repeated dose studies up to 2 weeks duration have been considered adequate to support clinical studies as well as marketing authorization. For those products intended for chronic indications, studies of 6 months duration have generally been appropriate although in some cases shorter or longer durations have supported marketing authorizations.

4.5 Immunotoxicity

One aspect of immunotoxicological evaluation includes assessment of potential immunogenicity and hypersensitivity (see section 3.6). In addition, many biotechnology-derived pharmaceutical products are intended to stimulate or suppress the immune system. Inflammatory reactions at the injection site may be indicative of a stimulatory response. In addition, the expression of surface antigens on target cells may be altered with implications for their autoimmune potential. Immunotoxicological testing strategies should be applied to clarify any such issues; however, routine tiered testing approaches or standard testing batteries are not recommended.

4.6 Reproductive performance and developmental toxicity

The need for reproductive/developmental toxicity studies is dependent upon the product, clinical indication, and intended patient population. Reproductive and developmental toxicity studies should follow the relevant ICH guidelines (Note 1). The specific study design and dosing schedule may be modified based on issues related to species specificity and/or antigenicity (Note 3).

4.7 Genotoxicity studies

The range and type of genotoxicity studies routinely conducted for conventional pharmaceuticals are not applicable to the active components of biotechnology-derived pharmaceutical products. The administration of large quantities of peptides/ proteins may yield uninterpretable results; moreover, it is not expected that these substances would interact directly with DNA or other chromosomal material (Note 4).

Studies in available and relevant systems, including newly developed systems, should be performed in those cases where there is cause for concern about the product (because of the presence of an organic linker molecule in a conjugated protein product).

4.8 Carcinogenicity studies

Product-specific assessment of carcinogenic potential may be needed, depending upon duration of clinical dosing and patient population (Note 1). However, where rodents are not the relevant species for assessing toxicity and/or the product is immunogenic, conventional carcinogenicity bioassays are not appropriate. When there is a concern about carcinogenic potential (e.g., growth factors) a variety of approaches should be considered.

Products that may have the potential to support or induce proliferation of transformed cells and clonal expansion leading to tumor formation should be evaluated for receptor expression in various malignant and normal human cells that are potentially relevant to the patient population under study. The ability of the product to stimulate growth of the malignant cells expressing the receptor or to initiate malignant cell growth in normal cells expressing the receptor should be determined. When in vitro data for tumor promotion give cause for concern, further studies in relevant animal models may be needed.

In those cases where the product is biologically active and nonimmunogenic in rodents, then an assessment of carcinogenic potential in a single species should be considered. Careful consideration should be given to the selection of doses. The use of pharmacokinetic or pharmacodynamic endpoints with consideration of receptor characteristics and intended exposures in humans represents the most scientifically valid approach for defining the appropriate doses. The rationale for the selection of doses should be provided.

4.9 Local tolerance studies

Local tolerance should be evaluated. Ideally, the formulation intended for marketing should be tested. However, in certain cases, the testing of representative formulations may be acceptable. In some cases, the potential local effects of the product can be evaluated in single or repeated dose toxicity studies thus obviating the need for separate local tolerance studies.

Note 1

''Quality of Biotechnological Products: Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human and Animal Origin'' (Q5A).

''Quality of Biotechnological Products: Derivation and Characterisation of Cell Substrates Used for Production of Biotechnological/Biological Products'' (Q5D).

''Specifications for New Drug Substances and Products: Biotechnolgical Products'' (Q6B).

''Guideline on the Need for Carcinogenicity Studies of Pharmaceuticals'' (S1A).

''Carcinogenicity: Testing for Carcinogenicity of Pharmaceuticals'' (S1B).

''Toxicokinetics: Guidance on the Assessment of Systemic Exposure in Toxicity Studies'' (S3A).

''Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies'' (S3B).

''Detection of Toxicity to Reproduction for Medicinal Products'' (S5A).

''Reproductive Toxicology: Toxicity to Male Fertility'' (S5B).

Note 2

Animal models of disease may be useful in defining toxicity endpoints, selection of clinical indications, and determination of appropriate formulations. It should be noted that with these models of disease there is often a paucity of historical data for use as a reference when evaluating study results. Therefore, the collection of concurrent control and baseline data is critical to optimize study design.

Note 3

In cases where extensive public information is available regarding potential reproductive and/or developmental effects of a particular class of compounds (e.g., interferons) and the only relevant species is the nonhuman primate, mechanistic studies indicating that similar effects are likely to be caused by a new but related molecule may obviate the need for formal reproductive/ developmental toxicity studies. In each case, the scientific basis for assessing the potential for possible effects on reproduction/ development should be provided.

Note 4

With some types of products there is a potential concern of accumulation of spontaneously mutated cells (e.g., via facilitating a selective advantage of proliferation). This could lead to concerns

regarding the potential carcinogenicity of such compounds. The standard battery of genotoxicity tests is not designed to test for these circumstances. Alternative responsive in vitro or in vivo models for such conditions may have to be developed and evaluated.

Dated: March 29, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–8620 Filed 4–3–97; 8:45 am]

BILLING CODE 4160–01–F

Friday
April 4, 1997

Part VI

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1805

Community Development Financial Institutions Program; Final Rule and Notices of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Intermediary and Core Components

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

RIN 1505–AA71

Community Development Financial Institutions Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Revised interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program). The revised interim rule is intended to enable the CDFI Fund to administer the CDFI Program in a more efficient manner. The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry.

DATES: Revised interim rule effective April 4, 1997; comments must be received on or before July 31, 1997.

ADDRESSES: All comments concerning this revised interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Comments may be inspected at the above address weekdays between 9:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. General

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Because no substantive changes were made to this regulation subsequent to submission to the Office of Management and Budget (OMB), the provisions of section 6(a)(3)(E) of the E.O. do not apply.

Regulatory Flexibility Act

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequence of this revised interim rule are a direct result of the implementation of statutory provisions.

Paperwork Reduction Act

The Department of the Treasury is issuing these revised interim regulations without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these revised interim regulations have been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the OMB under control number 1505–0154. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Comments concerning the collection of information should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Community Development Financial Institutions Fund, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Any such comments should be submitted not later than July 31, 1997. Comments are specifically requested concerning:

(1) Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the Community Development Financial Institutions Fund, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection(s) of information (see below);

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of complying with the proposed collection(s) of information, including the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Provisions requiring the collection of information can be found in §§ 1805.701 and 1805.903 of these revised interim regulations. The information requested in such provisions will be used to evaluate applications, monitor the performance of entities receiving assistance, and ensure compliance with statutory and program requirements. The collection(s) of information is required to obtain a benefit. The anticipated respondents and recordkeepers are financial institutions that may apply for and receive assistance.

Estimated total annual reporting and/or recordkeeping burden: 30,000.

Estimated average annual burden hours per respondent and/or recordkeeper: 100.

Estimated number of respondents and/or record keepers: 300.

Estimated annual frequency of responses: 1–4.

National Environmental Policy Act

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these revised interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

Administrative Procedure Act

Pursuant to the provisions of 5 U.S.C. 553(a)(2), these revised interim regulations are exempt from the proposed rule-making requirements of 5 U.S.C. 553(b) and are being issued as revised interim regulations without opportunity for notice and public comment prior to their effective date. Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. Congress appropriated funds for the CDFI Fund in FY 1996 and required such funds to be obligated by September 30, 1997. If the Department does not issue these regulations for effect, it will not be feasible to implement this program, as amended prior to September 30, 1997 in a manner that better achieves the results intended by Congress.

Catalog of Federal Financial Assistance Number

Community Development Financial Institutions Program—21.020.

II. Background

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994 (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of

the Administrator of the Fund as set forth in the authorizing statute.

Consistent with the placement and administration of the Fund within the Department's organizational structure, the Department of the Treasury's Inspector General will serve as the Inspector General for the Fund. Any individual who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided by the Fund is encouraged to report it to the Department of the Treasury's Office of Inspector General in writing or on the Inspector General's Hotline (toll free 1–800–359–3898). All telephone calls will be handled confidentially. Written complaints should be addressed to the U.S. Department of the Treasury, Office of Inspector General, Room 2412, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

All records and materials pertaining to the selection and awarding of assistance by the Fund shall be fully subject to the Freedom of Information Act. Interested parties should contact the U.S. Department of the Treasury, Office of the Assistant Secretary for Management, Disclosure Services at (202) 622–1500.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital into distressed communities and to individuals who have been unable to take full advantage of the financial services industry. The initiative is an important step in rebuilding poverty-stricken and transitional communities and creating economic opportunity for people often left behind by the economic mainstream.

Access to credit and investment capital is an essential ingredient for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small business, and empowering people. Over the past three decades, community-based financial institutions have proven that strategic lending and investment activities tailored to the unique characteristics of underserved markets are highly effective in improving the economic well being of communities and the people who live there.

The CDFI Fund was established to facilitate the creation of new, and expansion of existing, financial institutions that are specialized in serving these markets. These institutions—while highly effective—are typically small in scale, too few in number, and often have difficulty raising the equity capital needed to meet the demands for their products and services. The investments by the CDFI Program are intended to provide much-needed capital that will enable existing institutions to expand and facilitate the start-up of new institutions.

This issue of the **Federal Register** also contains two separate Notices of Funds Availability (NOFAs) for the program, one for the core component of the CDFI Program and another for a new intermediary component. The core component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. The core component continues the basic approach followed by the Fund in the first round of the CDFI Program. For the foreseeable future, the core component will receive the great bulk of the Fund's resources devoted to the CDFI Program.

The new intermediary component provides financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. The Fund recognizes that there are in existence certain intermediary CDFIs, and others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or CDFIs in formation. The Fund believes that providing financial assistance to such intermediaries can be an effective way to expand its support of the CDFI industry. To illustrate the concept of an intermediary CDFI with a few examples, an intermediary may have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry.

The revised interim rule published in this issue of the **Federal Register** incorporates only technical and other clarifying changes to the previous interim rule, including changes designed to provide flexibility and ease the burden of application and reporting requirements. The Fund received 20 written submissions of formal comments in response to the interim rule for the CDFI Program published in the **Federal Register** on October 19, 1995. The comments covered a variety of subjects including eligibility, target market designation, matching requirements, application contents, and the review process. The Fund has determined that before developing a final rule for this program, it would be useful to give interested parties an additional opportunity to comment on the interim rule, informed by their experience under the Program's first round and the process of developing applications pursuant to the NOFAs published separately in this issue of the **Federal Register**. It is the Fund's intent to issue a final rule that incorporates or addresses both the formal comments previously submitted and new comments received in response to the publication of this revised interim rule.

The following is a summary of the major provisions of the revised interim regulations, including references to the most significant changes from the earlier interim rule.

III. Community Development Financial Institutions Program

Subpart A—General Provisions

Under the Community Development Financial Institutions Program (12 CFR part 1805), the Fund provides financial and technical assistance to selected applicants in order to enhance their ability to make loans and investments and provide services for the benefit of designated investment area(s), targeted population(s), or both. The Fund selects awardees through a competitive application process. After selection, each awardee will enter into an assistance agreement with the Fund which includes the establishment of performance goals and other terms and conditions.

Subpart A contains general provisions including the purpose of the program (§ 1805.100), a summary (§ 1805.101), its relationship to other Fund programs (§ 1805.102) and definitions (§ 1805.104). Section 1805.104(aa) amends the definition of Low Income to accommodate appropriate adjustments since the 1990 census.

Subpart B—Eligibility

Section 1805.200 establishes criteria for qualification as a CDFI. The criteria reflect the requirements stated in the authorizing statute. To be eligible to apply for assistance, an entity must either be, or propose to become, a CDFI. The revised interim regulations describe the information needed by the Fund to assess whether, among other things:

(1) The applicant has a primary mission of community development;

(2) The applicant's predominant business activity is the provision of loans or investments; and

(3) The applicant serves an investment area(s) or targeted population(s).

The Fund recognizes that there will be significant diversity among applicants with respect to asset size, organizational type, stage of organizational development, products and services offered, and geographic location. Section 1805.200 provides that although an entity that proposes to become a CDFI may apply for assistance, if selected to receive financial assistance from the Fund such entity will not receive such financial assistance until it qualifies as a CDFI. An entity may receive technical assistance from the Fund before it becomes a CDFI, if such technical assistance is designed to assist it to become a CDFI.

The revised interim rule provides that an entity that proposes to become a CDFI is eligible to apply for assistance if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it can qualify as a CDFI within two years of entering into an assistance agreement with the Fund (or such lesser period as may be set forth in an applicable NOFA). The Fund recognizes that in certain cases, for example, start-ups that must undertake substantial fund raising and/or organizations that require regulatory approvals, an entity selected to receive assistance may not qualify as a CDFI until some time after its selection. However, the Fund believes that in most cases substantially less than two years will be required.

Section 1805.201 allows an entity to apply to the Fund for certification as a CDFI regardless of whether it is applying for assistance. The Fund believes that such a certification process will recognize the importance of the activities that institutions are engaged in, enhance their credibility with investors, and facilitate participation by CDFIs in other government programs.

Subpart C—Target Markets

As stated in § 1805.300, an applicant must designate one or more investment areas or targeted populations as the target market(s) it intends to serve. Section 1805.301 gives each applicant significant flexibility in designating an investment area provided that certain conditions are met. Investment areas must meet objective criteria of distress. Consistent with its statutory mandate, the Fund has developed objective criteria that are appropriate for identifying distress in metropolitan, non-metropolitan, and Native American communities. Investment areas may be comprised of a variety of different geographic units in order to reflect the neighborhoods, areas, or markets that applicants serve or propose to serve. Section 1805.301 requires that an investment area in a metropolitan area consist of census tracts, block groups, or a combination thereof.

Section 1805.302 incorporates the statutory requirements for defining a targeted population.

Subpart D—Use of Funds/Eligible Activities

Section 1805.401 lists the eligible activities for which financial assistance must be used and permits the Fund to approve other activities. Section 1805.402 requires that an applicant use the Fund's assistance and any corresponding matching funds for purposes approved by the Fund as reflected in an assistance agreement. The revised interim regulations place restrictions on such applicant's distribution of monies to affiliates or its community partners. Section 1805.403 describes technical assistance which may be sought as part of the application. Technical assistance requests pursuant to this part will be evaluated pursuant to the same competitive review criteria as financial assistance requests.

Subpart E—Investment Instruments

Section 1805.500 states that the Fund's primary objective in awarding financial assistance is to enhance the stability, performance, and capacity of an awardee. The Fund retains discretion to provide its assistance in a manner and amount different from an applicant's request.

Section 1805.501 describes the types of investment instruments through which the Fund may provide financial assistance. Section 1805.502 restates the Act's aggregate assistance limit of $5 million for each applicant in any three-year period—which may be increased by up to $3.75 million under special circumstances which have been clarified in the revised interim rule.

Subpart F—Matching Funds Requirements

Pursuant to § 1805.600, each applicant must obtain matching funds from sources other than the Federal government that are at least equal to the amount of financial assistance provided by the Fund. Community Development Block Grant funds may not be used for the match. As required by the Act and § 1805.601, the matching funds must be comparable in form and value to the Fund's financial assistance. This provision is intended to encourage match providers to offer their resources under the most favorable terms and conditions possible and enable a CDFI to obtain the Fund's assistance in a like manner.

Section 1805.603 permits applicants to satisfy matching requirements with funds obtained for up to one year prior to publication of a NOFA or such earlier date as may be specified in a NOFA for a particular funding round. The revised interim rule clarifies that funds that are used prior to the execution of the assistance agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the comprehensive business plan that the Fund is supporting through its assistance. (The revised interim rule further provides that funds spent for operating expenses prior to the calendar year in which the deadline falls for receipt of applications in an applicable NOFA shall not be eligible to be considered as matching funds.) To the extent consistent with the Act and these revised interim regulations, the Fund believes that applicants should be able to use matching funds when they are available.

Each NOFA may establish other conditions or restrictions on the time period for raising matching funds.

Subpart G—Applications For Assistance

Section 1805.701 specifies the information that must be provided as part of an application. This information describes how an applicant can demonstrate whether it meets the eligibility requirements of subpart B. The section also describes information that an applicant must provide to be evaluated and selected under subpart H. The most significant component of the application is a five-year comprehensive business plan. The plan will provide the basis for evaluating both the applicant's current capacity and its potential for the future. The plan must include, among other things, elements related to financial performance, management policies and capacity, market analysis, coordination efforts, community impact, funding resources, and timing. The application must contain a detailed description of the matching funds to be raised by the applicant for use in conjunction with the Fund's assistance. In order to facilitate coherence and avoid duplication, the revised interim rule permits an applicant to present its application materials in an order and format that it believes is the most appropriate. The revised interim rule also eliminates the Low Income Targeted Population Worksheet.

Subpart H—Evaluation and Selection of Applicants

Section 1805.800 outlines the evaluation and selection process. Section 1805.801 indicates the Fund's intent to seek to fund a geographically diverse group of applicants as required by the Act. The revised interim rule amends the evaluation and selection process discussed in subpart H. Without eliminating any of the evaluation factors, the revised interim rule restructures the process of evaluating applications described in § 1805.802 to expedite the process and improve its efficiency.

The revised interim rule states that the Fund will not provide assistance to an applicant that does not meet the eligibility requirements or that has not submitted complete application materials. In addition, the revised interim rule consolidates what had been the Tier 2 (financial and organizational capacity) and Tier 3 (other qualitative criteria) reviews into one set of substantive review criteria. The selection criteria set forth with respect to the CDFI Program in the interim rule published in the **Federal Register** on October 19, 1995, are retained, including financial strength and organizational capacity, extent of external resources, and community impact. The revised interim rule clarifies that the criteria to be considered include the quality of the applicant's comprehensive business plan and the extent and nature of an applicant's potential community development impact that will be catalyzed relative to the amount of assistance to be provided by the Fund. While ensuring fairness and consistency, the Fund will seek to implement the evaluation and selection process in a manner that takes into consideration the unique characteristics of applicants that vary by organizational type, total asset size, and stage of organizational development.

Subpart I—Terms and Conditions of Assistance

While Federal and State agencies will retain responsibility for assuring the safety and soundness of insured CDFIs, pursuant to § 1805.900 the Fund will (to the extent practicable) ensure that unregulated awardees are financially and managerially sound and maintain appropriate internal controls. Prior to receiving assistance, each awardee will execute an agreement with the Fund that describes its performance goals and other terms and conditions of assistance. Section 1805.901 describes the nature and use of the Fund's assistance agreements. The agreement will contain sanctions for noncompliance. As required by the Act, any proposed sanctions to be imposed on an insured CDFI must be discussed with the appropriate Federal banking agency under specific procedures. Pursuant to § 1805.902, disbursement of assistance from the Fund will be in a lump sum or over a period of time, as determined by the Fund. However, the Fund may provide no financial assistance until the awardee has secured firm commitments for its corresponding matching funds. This provision is intended to ensure that no Federal funds are released until other resources are leveraged.

Section 1805.903 describes the recordkeeping and reporting requirements applicable to awardees. These requirements are consistent with the Fund's fiduciary and monitoring responsibilities. Awardees are required to submit quarterly data on financial indicators and performance measures and annual reports and audits on its financial and programmatic performance. The revised interim rule contains modifications intended to provide awardees flexibility in their quarterly reports as well as flexibility in the timing of the submission of reports.

In developing its revised regulations, the Fund has sought to minimize its recordkeeping and reporting requirements. The Fund requests input on how to further reduce such burden while still meeting its statutory monitoring and enforcement requirements.

All awardees shall be subject to legal requirements pertaining to the Fund's assistance, including conflict of interest standards. Section 1805.905 requires each awardee to comply with all other governmental requirements. Section 1805.906 requires awardees to maintain standards of conduct acceptable to the Fund. Section 1805.907 describes lobbying restrictions applicable to awardees.

List of Subjects in 12 CFR Part 1805

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

For the reasons set forth in the preamble, chapter XVIII of title 12 of the Code of Federal Regulations is amended by revising part 1805 to read as follows:

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Eligibility

Subpart C—Target Markets

Subpart D—Use of Funds/Eligible Activities

Subpart E—Investment Instruments

Subpart F—Matching Funds Requirements

Subpart G—Applications for Assistance

Subpart H—Evaluation and Selection of Applications

Subpart I—Terms and Conditions of Assistance

Authority: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program*. (1) No Community Development Financial Institution may receive assistance from the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application for assistance pending under the Community Development Financial Institutions Program;

(ii) Received assistance under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Received assistance under the Community Development Financial Institutions Program for the same activities as proposed under an application for the Bank Enterprise Award Program.

(2) An Equity Investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution made by a Bank Enterprise Award Program Awardee may be used to meet the matching fund requirements described in subpart F of this part. Receipt of such Equity Investment or loan does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program*. No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements under § 1805.200;

(h) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(i) *Community Facility* means a facility where health care, child care, educational, cultural, or social services are provided; /

(j) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(k) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(l) *Community Partner* means a person (other than an individual) that provides loans, equity investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(m) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, equity investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(n) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.701(d);

(o) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*);

(p) *Development Investment* means an equity investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate;

(q) *Development Services* means activities that promote community development and are integral to lending and Development Investment activities. Such services shall prepare or assist potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Such services include, for example:

(1) Financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or

(2) Technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Financial Services* means checking, check-cashing, money orders, certified checks, automated teller machines, deposit-taking, and safe deposit box services;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(t) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(u) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(v) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(w) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(x) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(y) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(z) *Investment Area* means a geographic area meeting the requirements of § 1805.301;

(aa) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(bb) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(cc) *Non-Regulated CDFI* means any entity meeting the eligibility requirements of § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(dd) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(ee) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(h)(4); and

(ff) *Targeted Population* means individuals or an identifiable group meeting the requirements of § 1805.302.

§ 1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

§ 1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0154.

Subpart B–Eligibility

§ 1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in paragraphs (b) through (h) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part. Criteria to establish compliance with such requirements are set forth in § 1805.701(b).

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in paragraphs (b) through (h) of this section within two years of entering into an Assistance Agreement with the Fund or such lesser period as may be set forth in an applicable Notice of Funds Availability (NOFA). The Fund shall not, however, disburse any financial assistance to such an entity before it meets the requirements described in paragraphs (b) through (h) of this section.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.701(b).

(b) *Primary mission.* A CDFI shall have a primary mission of promoting community development.

(c) *Target market.* A CDFI shall serve an Investment Area(s) or Targeted Population(s).

(d) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments.

(e) *Development Services.* A CDFI, directly or through an Affiliate, shall provide Development Services in conjunction with loans or Development Investments.

(f) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(g) *Non-government entity.* A CDFI shall not be an agency or instrumentality of the government of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided that it is not controlled by such entities and maintains independent decision-making power over its activities.

(h) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in paragraphs (a) through (g) of this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in paragraphs (a) through (g) of this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in paragraphs (a) through (g) of this section.

(4) For the purposes of paragraphs (h)(1), (2) and (3) of this section, an Applicant will not be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls less than 25 percent of any class of its voting shares, and which does not, in any manner, otherwise control the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements (as described under § 1805.200) regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information described under § 1805.701(b). Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such a certification shall not constitute an opinion by the Fund as to the financial viability of the entity that obtains such certification or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraphs (b) through (h) of § 1805.200 are no longer met.

Subpart C—Target Markets

§ 1805.300 Target markets—general.

An Applicant shall designate one or more Investment Area(s) or Targeted Population(s) that it proposes to serve. An Applicant may also choose to serve both an Investment Area(s) and a Targeted Population(s). An Investment Area shall meet specific geographic and other criteria discussed in § 1805.301. A Targeted Population shall consist of Low-Income persons or those who otherwise lack adequate access to loans or equity investments.

§ 1805.301 Investment Area.

(a) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1)(i) Meets at least one of the objective criteria of economic distress as set forth in paragraph (d) of this section and has significant unmet needs for loans or equity investments as described in paragraph (e) of this section; or

(ii) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391); and

(2) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(b) *Geographic units.* Subject to the remainder of this paragraph (b), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant can designate one or more Investment Areas as part of a single application.

(c) *Designation.* An Applicant can designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (d) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (d) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(d) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the 1990 (or subsequent) decennial census and published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(5) In areas located outside of a Metropolitan Area, the county population loss between 1980 and 1990 is at least 10 percent.

(e) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or equity investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans and equity investments within such area(s).

(f) *Serving Investment Areas.* An Applicant can serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

§ 1805.302 Targeted Population.

(a) A Targeted Population shall mean individuals, or an identifiable group of individuals, who: are Low-Income persons; or lack adequate access to loans or equity investments. An Applicant can serve the members of a Targeted Population directly or through borrowers or investees that directly serve or provide significant benefits to such members.

(b) The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(c) An Applicant shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. 1691), to the extent that the Applicant is subject to the requirements of such Act.

Subpart D—Use of Funds/Eligible Activities

§ 1805.400 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart E of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to make loans and Development Investments and provide Financial Services.

§ 1805.401 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted

Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.402 Restrictions on use of assistance.

(a) An Awardee shall only use assistance provided by the Fund and its corresponding matching funds for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.403 Technical assistance.

(a) General. The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether or not the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.502.

(c) An Applicant seeking technical assistance must meet the eligibility requirements of § 1805.200 and submit an application as described in § 1805.701.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the competitive review criteria in subpart H of this part, except that requirements for matching funds are not applicable to technical assistance requests.

Subpart E—Investment Instruments

§ 1805.500 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.501, and under such terms and conditions as described in this subpart E. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.501 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.502 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall only be used to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart H of this part.

(c) An Awardee may only receive the assistance described in paragraph (b) of this section if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.802(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

§ 1805.503 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart F—Matching Funds Requirements

§ 1805.600 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.602, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under another Federal grant or award program cannot be used to satisfy the matching requirements described in this section. Community

Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance. However, funds spent for operating expenses prior to the calendar year in which falls the deadline for receipt of applications pursuant to an applicable NOFA shall not be used to meet the matching requirements.

§ 1805.601 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.602). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§ 1805.602 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a ''severe constraints waiver'' as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a ''severe constraints waiver'' only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.603 Time frame for raising match.

Applicants may use monies that have been obtained or legally committed for up to one year prior to the publication of a NOFA, or such earlier date or period specified in the NOFA, for an applicable funding round to meet the matching requirements. An Applicant shall raise the balance of its matching requirements within the period set forth in the applicable NOFA.

§ 1805.604 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.601(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (e.g., retained earnings at the end of fiscal year 1996 less retained earnings at the end of fiscal year 1995); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings can be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than an Insured Credit Union), retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings can be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an Insured Credit Union Applicant, retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in net capital that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire net capital that has been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, net capital shall be comprised of ''Regular Reserves'', ''Other Reserves'' (excluding reserves specifically dedicated for losses), and ''Undivided Earnings'' as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings can be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of net capital that is committed as matching funds;

(B) Such increase be achieved within 18 months of the last day of the month prior to the month in which the Applicant is selected to receive assistance; and

(C) Such increase be maintained for the period of time covered by the Comprehensive Business Plan;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares; (iii) The level from which the

increases in shares described in paragraph (d)(4)(i) of this section will be measured shall be the greater of the level of shares as of:

(A) The end of the calendar year immediately preceding the applicable application deadline; or

(B) The last day of the month prior to the month in which an Applicant is selected to receive assistance; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) An Applicant may only use retained earnings to meet the matching funds requirements if it has liquidity (as determined by the Fund) in amounts that are equal to or greater than the amount of retained earnings that is proposed for use as matching funds. In assessing an Applicant's liquidity for the purposes of this paragraph (e), the Fund may exclude any amounts that it determines are not available to promote an Awardee's performance goals and the purposes of the CDFI Program.

(f) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

Subpart G—Applications for Assistance

§ 1805.700 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with these regulations and the applicable NOFA published in the **Federal Register**. The NOFA will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

§ 1805.701 Application contents.

Unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet including the items specified in this section. To facilitate coherence and avoid duplication, an Applicant may present its application in an order and format that it believes to be the most appropriate, provided that the requested information is included and that an index is included to assist the Fund in locating the items requested in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in § 1805.200 by providing the information requested in this paragraph (b). The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b).

(1) *Primary mission.* (i) A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant and its Affiliates are principally directed:

(A) Within the geographic boundaries of an Investment Area(s);

(B) To members of a Targeted Population(s);

(C) To projects that provide significant benefits to residents of an Investment Area(s) or members of a Targeted Population(s); or

(D) To any combination of the above. The Fund may consider other factors, either in the alternative or in addition to those mentioned above, as it deems appropriate.

(ii) Using indicators selected by the Applicant that are appropriate given the nature of the products and services it (and its Affiliates) offers, an Applicant shall provide information pertinent to an evaluation of whether the activities of the Applicant and each Affiliate, when viewed collectively (as a whole), are principally directed in the manner described in paragraph (b)(1)(i) of this section.

(iii) An Applicant shall provide the information requested in paragraph (b)(1)(ii) of this section in accordance with paragraph (c) of this section.

(2) *Target markets.* Using the information in paragraph (b)(1) of this section that is submitted for the Applicant (excluding information on any Affiliates), an Applicant shall demonstrate that its total activities are principally directed to serving Investment Area(s), Targeted Population(s) or both.

(3) *Designation.* An Applicant shall provide a description of the Investment Area(s) or Targeted Population(s) to be served. If an Applicant is serving:

(i) An Investment Area(s), it shall submit:

(A) A completed Investment Area Designation worksheet contained in the application packet;

(B) A map of the designated area(s); and

(C) Studies or other analyses as described in § 1805.301(e);

(ii) A Targeted Population(s), it shall submit:

(A) In the case of a Low Income Targeted Population, a description of the service area from which the Low Income Targeted Population is drawn (which could be, for example, a local, regional or national service area); or

(B) In the case of a Targeted Population defined other than on the basis of Low Income, studies or other analyses that provide adequate evidence of lack of adequate access to loans or equity investments.

(4) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of loans, Development Investments, and/or similar financing. An Applicant can demonstrate that it is such an entity if it is a(n):

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization which is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, annual reports, organizing documents, and any other information submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's institutional type, total asset size, and stage of organizational development.

(ii) An Applicant described under:

(A) Paragraph (b)(4)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(4)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(4)(i)(C) of this section shall submit a copy of its balance sheets and income and expense

statements (and any notes or other supplemental information to its financial statements) as described in paragraph (d)(2)(i) of this section which clearly document its assets, liabilities, and net worth that are dedicated to lending and Development Investments and an explanation of how such assets, liabilities and net worth support these activities. An Applicant shall provide the information specified in this paragraph (b)(4)(ii)(C) for such periods as specified in paragraph (c) of this section.

(5) *Development Services.* An Applicant shall submit a summary description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(6) *Accountability.* An Applicant shall describe how it has and will maintain accountability to the residents of the Investment Area(s) or Targeted Population(s) it serves.

(7) *Non-government.* An Applicant shall submit articles of incorporation (or comparable organizing documents), charter, bylaws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(8) *Ownership*. An Applicant shall submit information indicating the portion of shares of all classes of voting stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

(9) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(i) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(ii) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(10) *Previous history.* An Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall:

(i) Describe its activities, operations and community benefits created for residents of the Investment Area(s) or Targeted Population(s) for such periods as described in paragraph (c) of this section; and

(ii) Demonstrate that the Applicant will expand its operations into a new Investment Area(s), serve a new Target Population(s), offer more products or services, or increase the volume of its activities.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in paragraphs (b)(1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in paragraphs (b)(1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for each full fiscal year since its inception; or

(3) For less than one year (including a start-up organization), shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d). The Comprehensive Business Plan shall demonstrate that the Applicant shall have the capacity to operate as a CDFI upon receiving financial assistance from the Fund pursuant to this part. The Plan should include projections that are appropriate given an Applicant's current and anticipated organizational type, total asset size, and stage of organizational development.

(1) *Executive summary.* An Applicant shall provide an executive summary of the Comprehensive Business Plan which includes a description of the institution (including relationships to any Affiliates), markets served or to be served, community needs, and other pertinent information.

(2) *Financial performance.*—(i) *Historic performance.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. Such statements should include balance sheets, income and expense statements, and a capitalization statement (which includes information on changes in capital structure and funding from outside sources) for the Applicant. The Applicant shall provide information necessary to assess trends in financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs, origination volume and volume of loans closed, annual or cumulative operating ratios).

(ii) *Future projections.* An Applicant shall submit projections for each of the next five years which includes balance sheet projections, income and expense projections, operating budgets, capitalization projections, estimates of the volume of new activity to be achieved assuming that assistance is provided by the Fund, and a description of any assumptions that underlie its projections.

(iii) *Financial statements.* (A) An Applicant shall submit:

(*1*) Audited financial statements;

(*2*) Financial statements that have been reviewed by a certified public accountant; or

(*3*) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency.

(B) All financial statements must utilize accrual based accounting methods. All historic financial statements shall be reported on the basis of the Applicant's fiscal year.

(iv) *Financial management policies.* An Applicant shall submit information on its financial management policies that describe its methodologies for underwriting and approving loans and investments and managing and monitoring its portfolio, internal operations, and capitalization needs.

(3) *Management capacity.* An Applicant shall provide information on the background and capacity of its management team, including the relevant background and expertise of management (such as resumes or statements of personal history), key personnel and governing board members, if appropriate. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(4) *Market analysis.* An Applicant shall provide an analysis of its target markets. An Applicant must:

(i) Describe its proposed target market(s), including a description of the characteristics of the Investment Area(s) (e.g., location, boundaries, economic characteristics, relationships to Metropolitan, non-Metropolitan, or regional markets) or Targeted Population(s) (e.g., number of persons, income, and other socio-economic characteristics), its methodology for selecting such target market(s), the size of the market(s), and any relevant market trends;

(ii) Describe the products and services (and corresponding pricing) it proposes to provide and analyze the competitiveness of such products and services in the target market(s); and

(iii) Identify and analyze any characteristics of the target market(s) that will create opportunities or present impediments for its products, services and overall market strategy (e.g., economic conditions, perceived or

documented credit needs or Financial Service needs, market activity, neighborhood perceptions, government services or delivery systems, community institutions, or strength of the employment base).

(5) *Strategy.* An Applicant shall describe its strategy for delivering its products and services to its target market(s). An Applicant may also describe any product or service development activities that are necessary before undertaking its strategy including the nature, scope, cost, timing, and risks of such activities. An Applicant shall also describe anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds.

(6) *Coordination strategy.* An Applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(7) *Projected community impact.* An Applicant shall provide an estimate of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) over the next five years, as indicated by the extent to which:

(i) The Applicant will concentrate its activities within an Investment Area(s) or among Targeted Population(s);

(ii) The Applicant's activities will expand economic opportunity (e.g., number of jobs created, jobs retained, businesses financed, business ownership opportunities facilitated, residents of Investment Area(s) or members of Targeted Population(s) employed, number or dollar amount of business loans and investment originations);

(iii) The Applicant's activities will facilitate revitalization (e.g., number of square feet of commercial space financed, dollar amount of commercial real estate loan originations, indicators of demand for such commercial space (e.g., market vacancy rates, pre-leased tenants, number of long term leases), number and square feet of Community Facility space financed, number of long term leases, and dollar amount of Community Facility loan originations);

(iv) The Applicant's activities will promote affordable housing (e.g., number of affordable rental units, dollar amount of affordable rental housing loans originated, information on the demand for such housing (e.g., market vacancy rates, number of people on public and assisted housing waiting lists), information on the type of size of units and the people who will reside in such units (e.g., families, special needs populations), number of homes purchased and dollar amount of home ownership loan originations));

(v) The Applicant will provide Development Services (as measured by the number of individuals that will receive Development Services); and

(vi) The Applicant will provide Financial Services (as measured by the number of new customers of Financial Services (e.g., individuals opening checking and savings accounts). In addition, the Applicant shall provide such other indicators as deemed appropriate by the Applicant or the Fund.

(8) *Community need.* An Applicant may provide information on the extent of economic distress within its Investment Area(s) or needs of its Targeted Population(s) to supplement the data required pursuant to subpart C of this part and paragraph (b)(3) of this section. Such information may be from sources other than the 1990 decennial census.

(9) *Funding sources.* An Applicant shall provide information:

(i) On its current and projected sources of capital and other financial support;

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period; and

(iii) To demonstrate that it will, to the maximum extent appropriate, increase self-sufficiency. Such information shall demonstrate that the Applicant will not be dependent upon future awards from the Fund for continued viability.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.802(b)(4);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart H of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(e) *Matching funds.* (1) An Applicant shall submit a detailed description of its plans for raising matching funds and likely or committed sources of funds to match the amount of financial assistance requested from the Fund. An Applicant shall indicate the extent to which such matching funds will be derived from private, nongovernment sources.

(2) An Applicant shall submit a description of any matching funds previously obtained or legally committed. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, if applicable, the extent to which, and for what purpose, such matching funds have been used to date, and terms and restrictions on use for each matching source, including any restriction that might reasonably be construed as a limitation on the ability of the Applicant to use the funds for matching purposes. The application shall include copies of any agreements, memoranda of understanding, letters of intent, or similar documents pertaining to matching funds.

(3) If an Applicant intends to use retained earnings to meet the matching funds requirements, it shall provide the information described in paragraph (d)(2)(iii) of this section and a copy of its tax returns for the same period, or, in the case of an Insured Credit Union, a copy of its most recent Form 5300 that has been submitted to the National Credit Union Administration. The Applicant shall submit a certification from its governing body:

(i) As to the amount and form of retained earnings available as matching funds; and

(ii) That such earnings will be used for the purposes described in its application.

(4) If the Applicant is requesting a ''severe constraints waiver'' of any matching requirements, it shall submit the information requested in § 1805.602.

(f) *Support.* An Applicant shall provide information to demonstrate the extent of support (if any) within the Investment Area(s) or Targeted Population(s) for its activities.

(g) *Community Ownership and Governance.* An Applicant shall provide information to demonstrate whether it is Community-Owned or Community-Governed.

(h) *Conflict of interest.* An Applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

(i) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(j) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.907; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

Subpart H—Evaluation and Selection of Applications

§ 1805.800 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s), that is intended to:

(a) Ensure that Applicants are evaluated on a competitive basis in a fair and consistent manner;

(b) Ensure that all Awardees satisfy quality standards; and

(c) Take into consideration the unique characteristics of institutions that vary by institution type, total asset sizes, stage of organizational development, markets served, products and services provided, and location.

§ 1805.801 Geographic diversity.

In selecting Awardees, the Fund shall seek to fund a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.802 Evaluation of Applications.

(a) *Eligibility and Completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described under § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional or supplemental information from the Applicant, if it deems it appropriate.

(b) *Substantive Review.* In evaluating and selecting Applicants, the Fund will evaluate factors including the following:

(1) *Financial Strength and Organizational Capacity.* The Fund will examine several criteria in evaluating financial and organizational capacity and an Applicant's likelihood of success in meeting the goals of its Comprehensive Business Plan. These criteria will include the experience, strength and background of an Applicant's management team and other key personnel, the quality of its financial management policies and practices, the breadth and depth of its financial resources, the quality of its Comprehensive Business Plan, and trends in financial and operating performance.

(2) *External resources.* The Fund will evaluate the extent of external resources available to an Applicant based on:

(i) The amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the matching funds in a timely manner;

(ii) The extent to which the matching funds are, or will be, derived from private sources or new investments;

(iii) Whether an Applicant is, or will become, an Insured CDFI; and

(iv) The extent to which an Awardee will use assistance to expand the funds available for lending and equity investments beyond the sum of the award and the matching funds.

(3) *Community impact.* The Fund will evaluate an application's community impact based on:

(i) The extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria;

(ii) The extent to which an Applicant will concentrate its activities on serving Investment Area(s) or Targeted Population(s);

(iii) The extent of need for loans, equity investments, Development Services, and Financial Services within the designated Investment Area(s) or Targeted Population(s);

(iv) The extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Investment Area(s) or Targeted Population(s);

(v) The extent of support from the designated Investment Area(s) or Targeted Population(s);

(vi) The extent to which an Applicant is, or will be, Community-Owned or Community-Governed;

(vii) The extent to which an Applicant will increase its resources through such means as a Community Partnership, participation in the secondary market, and coordination with other institutions (e.g., a local Empowerment Zone or Enterprise Community coordinating entity);

(viii) The extent and nature of the potential community development impact that will be catalyzed by the Fund's assistance, relative to the amount of such assistance to be provided; and

(ix) In the case of an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the extent of success in serving them.

(4) *Community Partnerships.* Community Partnerships will be evaluated based on the extent to which the Applicant and Community Partner meet the factors described in paragraphs (b)(1), (2) and (3) of this section and giving consideration to the extent to which:

(i) The Community Partner will participate in carrying out the activities of the Community Partnership;

(ii) The Community Partnership will enhance the likelihood of success of the Comprehensive Business Plan; and

(iii) Service to an Investment Area(s) or Targeted Population(s) will be better performed by a Community Partnership than by an Applicant alone.

(5) *Other factors.* The Fund may consider any other factors with respect to any application as it deems appropriate.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund shall consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of

an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart I—Terms and Conditions of Assistance

§ 1805.900 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.901 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1805.902 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§ 1805.903 Data collection and reporting.

(a) *Data—general.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement.

(2) An Awardee shall submit a report within 45 days after the end of each calendar quarter, or within some other period after the end of each calendar quarter as may be agreed to in the Assistance Agreement, with information on, unless otherwise determined by mutual agreement between the Awardee and the Fund, the performance of its loans, Development Investments, Development Services, and Financial Services in the previous quarter, and unaudited financial statements. Such report shall include key indicators of portfolio performance, including volume of originations, delinquencies, and defaults, and charge-offs for the previous quarter.

(3) An Awardee shall submit a report within 60 days after the end of each Federal fiscal year, or by such alternative deadline as may be agreed to in the Assistance Agreement, with:

(i) Information on its customer profile and the performance of its loans, Development Investments, Development Services, and Financial Services for the previous year;

(ii) Information on its portfolio performance, including volume of originations, delinquencies, and defaults and charge-offs for the previous year;

(iii) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(iv) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement;

(v) Certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(vi) Its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the Awardee's most recently completed fiscal year. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office's Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (''Audits of Institutions of Higher Education and Other Nonprofit Institutions''), as applicable.

(4) The Fund shall make reports described in paragraph (e)(2) and (e)(3) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) of this section shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503; and

(2) General Accounting Office materials may be obtained from GAO

Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1805.904 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

§ 1805.905 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§ 1805.906 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Development Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Development Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.907 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1805.908 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.909 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.910 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.911 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Core Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (hereafter referred to as the ''Act'') provides authority for the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to select and provide financial and technical assistance to eligible applicants under the Community Development Financial Institutions (''CDFI'') Program. The revised interim rule (12 CFR part 1805), published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of the necessary application materials and program requirements. As of the date of this Notice and subject to funding availability, the Fund intends to award up to $32.5 million in appropriated funds pursuant to this Notice. The Fund reserves the right to award in excess of $32.5 million in appropriated funds pursuant to this Notice provided that the funds are available and the Fund deems it appropriate to do so. This Notice is in connection with the core component of the CDFI Program. The core component provides direct assistance to CDFIs that serve their target markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. Also being published elsewhere in this issue of the **Federal Register** is a separate Notice in connection with an intermediary component of the CDFI Program. The intermediary component provides financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. The Fund currently anticipates making available up to $7.5 million of appropriated funds for the intermediary component, making up to $40 million the estimated aggregate amount of appropriated funds available under the CDFI Program pursuant to the Notices being published in this issue of the **Federal Register**. (Since only the subsidy cost, and not the face amount, of loans must be charged against appropriated funds, the actual aggregate amount of awards is likely to be somewhat higher than the amount of appropriated funds that are obligated.)

DATES: Applications may be submitted at any time following April 4, 1997. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Friday, June 20, 1997. Applications received after that date and time will not be accepted and will be returned to the sender. Applications sent by facsimile will not be accepted.

ADDRESSES: Applications must be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–8662. (This is not a toll free number.) If you have any questions about the regulations, this Notice or the application packet, you may call or write to the Fund at the above telephone number or address, or you may send questions by facsimile to (202) 622–7754. To request an application packet, please send by facsimile a written request which includes the name of the requester, organization, mailing address, telephone number and facsimile number. Requests for an application packet should be sent by facsimile to (202) 622–2599, which is the facsimile number being used to received requests for an application packet.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is facilitating the creation of a national network of financial institutions that are specifically dedicated to community development. This strategy will build strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. The Act, enacted to implement this vision, authorizes the Fund to select entities to receive financial and technical assistance. New institutions are eligible to receive start-up assistance. Institutions in operation at the time of application are eligible to receive assistance to expand their activities. This Notice invites applications from eligible applicants for the purpose of promoting community development activities and revitalization.

The Fund has determined that it can best address the needs of the diverse and growing CDFI industry by expanding the tools it utilizes to assist CDFIs. The program connected with this Notice constitutes the core component of the CDFI Program, involving direct assistance to CDFIs that serve their target markets through loans, investments and other activities, rather than primarily through the financing of other CDFIs. For the foreseeable future, this core component will receive the great bulk of the Fund's resources devoted to the CDFI Program. However, the Fund recognizes that many CDFIs may have specialized needs which the Fund can most effectively address by supporting intermediary CDFIs that, in turn, address such specialized needs. Thus, to expand its reach, and better address the varied needs of the CDFI industry, the Fund is also having published elsewhere in this issue of the **Federal Register** a separate Notice containing an intermediary component of the CDFI Program. This intermediary component is also being published pursuant to the revised interim rule (12 CFR part 1805). An applicant under the intermediary component Notice shall meet the eligibility requirements under § 1805.200. An additional requirement imposed upon each intermediary component applicant pursuant to § 1805.200(a)(3) is that it must primarily focus on financing CDFIs or CDFIs in formation. To illustrate the concept, an intermediary CDFI may have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing CDFIs being formed or organized but which are not yet CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry.

II. Eligibility

The Act specifies the requirements that each applicant must meet in order to be considered a CDFI. Entities that meet, or propose to meet, these requirements are eligible to apply for assistance. In general, a CDFI must have a primary mission of promoting community development, provide

lending or investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a nongovernment entity. The details of these requirements and other program requirements are described in the revised interim rule governing the CDFI Program (12 CFR part 1805) which is published elsewhere in this issue of the **Federal Register**. A CDFI, or proposed CDFI, whose primary focus is financing other CDFIs and/or providing financing to support the formation of CDFIs shall not be eligible to apply pursuant to this Notice, but instead may be eligible to apply pursuant to the Notice on the intermediary component published elsewhere in this issue of the **Federal Register.**

III. Types of Assistance

An applicant may submit an application for financial assistance, technical assistance, or both. Financial assistance may be provided through an equity investment, a grant, a loan, deposits, credit union shares, or some combination thereof. Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of assistance requested. Applicants for technical assistance shall describe the types of technical assistance requested, estimate the cost to obtain such assistance, and provide a narrative justification of its needs for such assistance.

IV. Application Packet

Except as described hereafter, an applicant, whether applying for financial assistance, technical assistance, or both, shall submit the materials described in § 1805.701 and the application packet. To facilitate coherence and avoid duplication, an applicant may present its application in an order and format that it believes to be the most appropriate, provided that the requested information is included and that an index is provided to assist the Fund in locating the items requested by § 1805.701.

If an applicant is currently certified as a CDFI, it may, at its option, submit a copy of the letter of certification in lieu of the information requested in Part III, A through H, of the application packet. However, an applicant should include in its application information that it believes is relevant to the substantive review of the application specified in § 1805.802(b).

V. Matching Funds

Applicants pursuant to this Notice may use for matching funds monies obtained or legally committed on or after January 1, 1996. Applicants selected to receive assistance under this Notice must have firm commitments for the matching funds required pursuant to § 1805.600 by no later than August 31, 1997. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date. The Fund reserves the right to grant an extension of such matching funds deadline for specific applicants selected for assistance if the Fund deems it appropriate.

VI. Selection Factors

Applications will be selected on a competitive basis in accordance with criteria described in §§ 1805.800 to 1805.802. Special emphasis is expected to be placed on:

(1) The applicant's track record, financial strength, and current operations;

(2) The capacity, skills, and experience of the management team;

(3) The quality of the applicant's comprehensive business plan;

(4) The likelihood that the applicant will be able to raise the required matching funds; and

(5) The extent and nature of the potential community development impact that would be catalyzed by the Fund's assistance, relative to the amount of such assistance to be provided.

The applicant's track record, financial strength and current operations are important to the extent they may be suggestive about the prospects for success in the future. In the case of a young or start-up institution with no or a limited track record, extra emphasis will be placed on the capacity, skills, and experience of the applicant's management team and the quality of its comprehensive business plan.

While previous awardees are eligible to apply pursuant to this Notice, it is the current expectation of the Fund that a substantial majority of the funds awarded pursuant to this Notice will be to applicants that are not previous awardees. Therefore, the Fund may give additional consideration to applicants that are not previous awardees.

The Fund has sole discretion in the selection of applications for assistance. The anticipated maximum award per applicant under this Notice is $2 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $2 million for an applicant(s) if it deems it appropriate.

VII. Workshops

The CDFI Fund expects to host workshops to disseminate information to organizations interested in applying for assistance pursuant to this Notice. If you wish to be on a mailing list to receive information about the scheduling of such workshops, please contact the Fund.

VIII. Other Matters

(a) Paperwork Reduction Act. The reader should refer to the revised interim rule (12 CFR part 1805) published elsewhere in this issue of the **Federal Register** for details on the information collection requirements of the rule and this Notice.

(b) Environmental Impact. Pursuant to Treasury Directive 75–02, the Department of the Treasury has determined that implementation of the CDFI Program under the revised interim rule is categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and does not require an environmental review. The determination is available for public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the office of the Fund.

Authority: 12 U.S.C. 4703, 4717: Chapter X, Pub. L. 104–19, Stat. 237; 12 CFR 1805.700.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

[FR Doc. 97–8785 Filed 4–2–97; 1:09 pm]

BILLING CODE 4810–70–P

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions (CDFI) Program—Intermediary Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) (hereafter referred to as the ''Act'') provides authority for the Community Development Financial Institutions Fund (hereafter referred to as ''the Fund'') to select and provide assistance to eligible applicants under the Community Development Financial Institutions (''CDFI'') Program. The revised interim rule (12 CFR part 1805), published elsewhere in this issue of the **Federal Register**, provides guidance on the contents of necessary application materials and program requirements. This Notice is in connection with two

competitive rounds of a new intermediary component of the CDFI Program. This intermediary component will provide financial assistance to CDFIs that provide financing primarily to other CDFIs and/or to support the formation of CDFIs. The Fund currently anticipates making awards of between $5.0 million and $7.5 million in appropriated funds pursuant to this Notice. Also being published elsewhere in this issue of the **Federal Register** is a separate Notice in connection with the core component of the CDFI Program, with respect to which the Fund intends to make available up to $32.5 million in appropriated funds.

DATES/TWO ROUNDS: Applications may be submitted at any time after April 4, 1997. Applications will be evaluated competitively for the intermediary component in two separate rounds. For the first round, the deadline for receipt of an application is 6 p.m. Eastern Standard Time on Friday, May 16, 1997. For the second round, the deadline for receipt of an application is 6 p.m. Eastern Standard Time on Friday, June 20, 1997. Applications received after the deadline for the first round but before the deadline for the second round will be considered as part of the second round. Applications received after the deadline for the second round will not be accepted and will be returned to the sender. An applicant may apply in each round. Applications sent to the Fund by facsimile will not be accepted.

The Fund anticipates making available at least $5 million in appropriated funds pursuant to this Notice. If less than $2.5 million in appropriated funds is awarded in the first round, the amount of available funds for the second round will be $5 million less the amount awarded in the first round. If $2.5 million or more is awarded during the first round, the amount of available funds for the second round will be $2.5 million. As of the date of this Notice, for the two rounds combined, the Fund intends to award no more than $7.5 million in appropriated funds. The Fund reserves the right to award higher or lower amounts in each round, and for the two rounds combined, than the amounts described above, depending on the quality of applications received in each round.

The anticipated maximum aggregate award per applicant under this Notice (i.e. for both rounds combined) is $1.25 million. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $1.25 million for an applicant(s) if it deems it appropriate.

ADDRESSES: Applications must be sent to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–8662. (This is not a toll free number.) If you have any questions about the regulations, this Notice or the application packet, you may call or write to the Fund at the above telephone number or address, or you may send questions by facsimile to (202) 622–7754. To request an application packet, please send by facsimile a written request which includes the name of the requester, organization, mailing address, telephone number and facsimile number. Requests for an application packet should be sent by facsimile to (202) 622–2599, which is the facsimile number being used to receive requests for an application packet.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients in creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is facilitating the creation of a national network of financial institutions that are specifically dedicated to community development. This strategy will build strong institutions that make loans and investments and provide services to economically distressed investment areas and disadvantaged targeted populations. This Notice is in connection with a new intermediary component of the CDFI Program.

Elsewhere in this issue of the **Federal Register**, the Fund is publishing a new Notice of Funds Availability for financial and technical assistance to CDFIs pursuant to the direct funding approach used in the first round. That separate Notice is in connection with the core component of the CDFI Program, and the Fund anticipates that for the foreseeable future, the Fund will devote the great bulk of the financial assistance available for the CDFI Program to this core component. In the separate Notice for the core component, the Fund is making available up to $32.5 million in appropriated funds.

The Fund also recognizes that to address the diverse needs and take full advantage of the enormous potential of the growing CDFI industry, it is important that the Fund be on the cutting edge of innovation by expanding the tools it utilizes to assist CDFIs. This Notice in connection with an intermediary component of the CDFI Program is one part of a broader effort to develop and make available such new tools.

The Fund recognizes that there are in existence certain intermediary CDFIs, and others may be created over time, that focus their financing activities primarily on financing other CDFIs. Such institutions may have knowledge and capacity to develop and implement a specialized niche or niches in their financing of CDFIs and/or CDFIs in formation. The Fund believes that providing financial assistance to such intermediaries can be an effective way to expand its support of the CDFI industry. To illustrate the concept of an intermediary CDFI with a few examples, an intermediary may have a specialized niche or niches focusing on financing a specific type or types of CDFIs, providing small amounts of capital per CDFI, financing CDFIs with specialized risk levels, or financing institutions seeking to become CDFIs. By providing financial assistance to specialized intermediaries, the Fund believes it can leverage the expertise of such intermediaries and strengthen the Fund's capacity to support the development and enhancement of the CDFI industry. This Notice invites applications from CDFIs, and organizations seeking to become CDFIs, that are or plan to become such a specialized intermediary, focusing on providing loans to or investments in other CDFIs and/or to support the formation of CDFIs. This Notice is not intended and should not be construed to allow an applicant to file a joint application on behalf of a group of other CDFIs, but rather to provide financial assistance to intermediaries who have criteria for financing, in arms length transactions, other CDFIs and/or to support the formation of CDFIs.

This Notice implements the intermediary component by using two competitive rounds. This should expedite the ability of intermediary CDFIs to provide financing to other CDFIs, and should assist the ability of the intermediary component of the CDFI Program to work effectively with the core component in a mutually supportive manner. Many CDFIs will be facing the decision of whether they should devote the substantial time and effort necessary to prepare an application, due by June 20, 1997, in response to the core component Notice

published elsewhere in this issue of the **Federal Register**. Given what is expected to be the highly competitive nature of the core component round, many CDFIs may decide not to apply for the core component, but instead to concentrate on seeking assistance from an intermediary.

The Fund believes, however, that there may be some intermediary organizations that wish to apply for assistance in response to this intermediary component Notice, that will need more time to submit a quality application than is provided by the May 16, 1997, deadline for the first round. Such organizations may apply in the second round by the June 20, 1997, deadline.

II. Eligibility

An applicant for assistance pursuant to this Notice must meet the eligibility requirements set forth in § 1805.200. In addition, pursuant to § 1805.200(a)(3), this Notice is limited to applicants that satisfy the following requirements: (1) The applicant's financings (loans and/or development investments) must primarily focus on financing other CDFIs and/or supporting the formation of CDFIs; and (2) if the applicant is not a CDFI at the time of application, the application shall include a realistic plan for the applicant to become a CDFI within one year of the date on which the Fund approves the applicant for financial assistance (which period may be extended at the sole discretion of the Fund). In no event will the Fund disburse assistance to the applicant until the applicant can be certified as a CDFI.

III. Types of Assistance

An applicant may submit an application for financial assistance in the form of an equity investment, loan, or grant (or a combination of these financial assistance instruments). Applicants for financial assistance shall indicate the dollar amount, form, terms, and conditions of assistance requested. The Fund will not accept applications for technical assistance pursuant to this Notice.

Since an intermediary that is selected pursuant to this Notice must be a CDFI when funded, its predominant business activity must be the provision of loans and/or development investments. Thus, even if an intermediary applicant receives a grant from the Fund, the Fund will normally expect that the intermediary will use such grant to enhance its ability to make loans and/or development investments in CDFIs or to support the formation of CDFIs. However, the Fund will consider requests by an intermediary applicant to utilize Fund assistance to enhance the ability of the intermediary to make grants to CDFIs or to support the formation of CDFIs, as long as the intermediary applicant makes a persuasive case that using Fund assistance in this manner will further the purposes of the Act, and as long as the intermediary's predominant business activity will remain the provision of loans and/or development investments.

IV. Application Packet

Except as described hereafter, an applicant shall submit the materials described in § 1805.701 and the application packet. To facilitate coherence and avoid duplication, an applicant may present its application in an order and format that it believes to be the most appropriate, provided that the requested information is included and that an index is provided to assist the Fund in locating the items requested by § 1805.701.

If an applicant is currently certified as a CDFI, it may, at its option, submit a copy of the letter of certification in lieu of the information requested in Part III, A through H, of the application packet. However, an applicant should include in its application information that it believes is relevant to the substantive review of the application specified in § 1805.802(b).

Since the target markets served by an applicant pursuant to this Notice will depend on the target markets served by CDFIs funded by the applicant, the applicant need not fill out Part III, C. Map of Investment Area(s), D. Studies or Analyses of Unmet Needs, or L. Target Market Designation, or the Investment Area Designation Worksheet. Instead the applicant should describe its target markets, which description may be general in nature and may include target markets that are regional or national in scope. The application should include a general description and analysis of target markets served by CDFIs and/or CDFIs in formation which the applicant currently finances, and what changes in such target markets, if any, may be expected if the applicant receives financial assistance from the Fund. If applicable, the applicant should provide a list of CDFIs or CDFIs in formation that it has financed, and the amount and form of financing, over at least the last three years.

V. Matching Funds

Applicants pursuant to this Notice may use for matching funds monies obtained or legally committed on or after January 1, 1996. Applicants selected to receive assistance under this Notice must have firm commitments for the matching funds required pursuant to § 1805.600 by no later than August 31, 1997. The Fund may recapture and reprogram funds if an applicant fails to raise the required match by such date. The Fund reserves the right to extend such matching funds deadline for specific applicants selected for assistance if the Fund deems it appropriate.

VI. Selection Factors

Applications will be selected on a competitive basis in accordance with criteria described in 12 CFR 1805.800 to 1805.802. The Fund has sole discretion in the selection of applications for assistance. Special emphasis is expected to be placed on:

(1) The applicant's track record, financial strength, and current operations;

(2) The capacity, skills, and experience of the management team;

(3) The quality of the applicant's comprehensive business plan;

(4) The likelihood that the applicant will be able to raise the required matching funds; and

(5) The extent and nature of the potential community development impact that would be catalyzed by the Fund's assistance, relative to the amount of such assistance to be provided.

The applicant's track record, financial strength, and current operations are important to the extent they may be suggestive about the prospects for success in the future. In the case of a young or start-up institution with no or a limited track record, extra emphasis will be placed on the capacity, skills, and experience of the applicant's management team and the quality of its comprehensive business plan.

For the purposes of evaluating applications submitted pursuant to this Notice, the Fund will evaluate the extent to which provision of financial assistance by the Fund to an applicant is likely to add substantial benefits to the CDFI industry, above and beyond what the Fund can expect to accomplish with its core component. Thus an applicant having a specialized niche or niches is important. At the same time, the Fund is seeking to assist intermediaries whose potential customer base has broad applicability. For example, the Fund does not seek to provide financial assistance to an intermediary that has a narrow list of preselected CDFIs it wishes to finance. The Fund seeks to finance intermediaries that have a more open-ended potential applicant pool and

which will be making an independent evaluation of each application, based on criteria specified in the intermediary applicant's comprehensive business plan. Moreover, the Fund may give a preference to applicants that serve or expect to serve CDFIs or CDFIs in formation in a multi-state area or on a national basis, as opposed to a single state.

VII. Other Matters

(a) Paperwork Reduction Act. The reader should refer to the revised interim rule (12 CFR part 1805) published separately in today's **Federal Register** for details on the information collection requirements of the rule and this Notice.

(b) Environmental Impact. Pursuant to Treasury Directive 75–02, the Department of the Treasury has determined that implementation of the CDFI Program under the revised interim rule is categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and does not require an environmental review. The determination is available for public inspection between 9:30 a.m. and 4:30 p.m. weekdays at the office of the Fund.

Authority: 12 U.S.C. 4703, 4717: Chapter X, Pub. L. 104–19, Stat. 237; 12 CFR 1805.700.

Kirsten S. Moy,

Director, Community Development Financial Institutions Fund.

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Federal Register

Vol. 62, No. 65

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