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Wednesday
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Title 3—

The President

Proclamation 7184 of April 15, 1999

National Park Week, 1999

By the President of the United States of America

A Proclamation

America's national parks are truly America's national treasures. Within their borders lie much of what is most precious to us: the breathtaking beauty of mountains, rivers, forests, and valleys; the extraordinary richness and variety of plants and animals; the places and artifacts of the special people and events that have shaped both our history and our destiny.

This week we remember with gratitude one of those special people who played a pivotal role in the creation of our country's National Park System. Conservationist John Muir emigrated to the United States as a child 150 years ago this year. As a young man, he experienced for the first time the high country of California's Sierra Nevada and Yosemite, and for the rest of his life he championed America's wild places. ''Everybody needs beauty as well as bread,'' he wrote, ''places to play in and pray in, where nature may heal and cheer and give strength to body and soul alike.'' He became the driving force behind the creation of such national parks as Yosemite, Sequoia, Mount Rainier, Petrified Forest, and Grand Canyon, and was an early advocate of an agency to manage them in a consistent manner. Although he died two years before the establishment of the National Park Service in 1916, many still regard John Muir as the ''Father of our National Park System.''

Visitors to our Nation's wondrous national treasures can still experience the scenic grandeur that so inspired John Muir. In Washington State's Mount Rainier National Park, glaciers radiate from the summit and slopes of an ancient volcano, rising above dense green forests and brilliantly flowered meadows. This year, we celebrate the centennial anniversary of this cherished national park, preserved because of the vision and efforts of a coalition of mountaineers, geologists, and conservationists, including John Muir.

Today, the National Park System has grown to 378 sites visited by more than 285 million people each year. Each of these sites is interwoven with America's richly diverse natural and cultural heritage to make up the pattern of our past, the fabric of our present, and the promise of our future. The two newest additions to our park system reflect this grand tradition. Little Rock Central High School National Historic Site in Arkansas pays tribute to the courage and quiet dignity of nine young African Americans who crossed the color line and changed American society forever. Alabama's Tuskegee Airmen National Historic Site celebrates the World War II exploits of the all-black Army Air Corps unit whose members prevailed over prejudice and discrimination in the U.S. Armed Forces to compile a distinguished combat record in defense of freedom.

At these and so many other parks and historic sites across the country, the dedicated men and women of the National Park Service preserve America's heritage and teach a new generation the importance of informed and careful stewardship of our Nation's treasured places. During National Park Week, let us give thanks for the wisdom of all those who established our national parks and for the hard work and generous spirit of all those who continue to preserve them for our benefit. Because of their efforts, Americans

will always find in our national parks the beauty, inspiration, knowledge, and renewal of spirit that have blessed our national journey for so long.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 19 through April 25, 1999, as National Park Week.

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

William J. Clinton

[FR Doc. 99–10128
Filed 4–20–99; 8:45 am]
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Rules and Regulations

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

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule that incorporates into its regulations the agency's longstanding interpretation that federal credit unions (FCUs) are authorized, within limits, to make charitable contributions and donations. NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations.

DATES: This rule is effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1998, the NCUA Board requested comments on a proposed rule to incorporate into NCUA regulations the requirements of Interpretive Ruling and Policy Statement 79–6, Donations/Contributions (IRPS 79–6). 63 FR 57942, October 29, 1998. Tracking IRPS 79–6, the proposed rule permitted an FCU to make charitable contributions to a recipient that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code (501(c)(3) organization) and located in or conducting its activities in a community in which the FCU has a principal place of business. 26 U.S.C. 501(c)(3) (1998). The proposed rule also permitted FCUs to make charitable contributions to a 501(c)(3) organization that operates primarily to promote and develop credit unions. Finally, the proposed rule provided that an FCU's board of directors must approve charitable contributions based on a determination that the contributions are in the best interests of the credit union and are reasonable given the financial condition of the credit union.

Summary of Comments

The NCUA Board received thirty-four comment letters regarding the proposal: three from national trade associations; seven from credit union leagues; twenty-three from FCUs; and one from a state-chartered credit union.

Comments on Proposed Section 701.25(a)

Twenty-six commenters stated that limiting donation recipients to 501(c)(3) organizations is too restrictive and could exclude organizations and causes that are otherwise worthy of receiving donations from FCUs. One commenter suggested broadening the 501(c)(3) restriction by defining eligible recipients as ''organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code.'' Revised Code of Washington 31.12.402(20). We note that, while Washington state law does not require that recipients are tax exempt organizations under 501(c)(3), it requires credit unions to work with community leaders and limits donations to ''efforts to improve areas where their [credit union] members reside.''

Since issuance of IRPS 79–6, the NCUA has viewed the legal authority for FCUs to make contributions as ''an activity incidental to an FCU's business'' under the provision of the FCU Act that authorizes FCUs ''to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' 44 FR 56691 (Oct. 2 1979); 12 U.S.C. 1757(17). An FCU's purpose, as a nonpropfit cooperative, is to benefit its members by ''promoting thrift among its members and creating a source of credit for provident or productive purposes.'' 12 U.S.C. 1752(1). Prior to issuance of IRPS 79–6, the NCUA had permitted FCUs to make donations only where the FCU would derive a direct benefit. While IRPS 79–6 broadened an FCU's ability to make contributions by permitting contributions for ''diverse, charitable, recreational and educational needs of the public,'' it limited permissible donations to 501(c)(3) organizations. The discussion accompanying IRPS 79–6 specifically prohibited contributions for candidates to league or trade association positions or for political office and cautioned FCUs about the applicability of the conflict of interest provisions of the FCU bylaws.

The range of organizations that qualify as 501(c)(3) organizations is very broad, permitting donations to community chests and religious, charitable, scientific, and educational organizations, institutions and foundations. In addition, the 501(c)(3) designation insures a degree of credibility and independence in the exercise of the board of directors' decision as fiduciaries for member funds. These factors are important given that the funds an FCU will use for contributions would otherwise be available for dividends to members who, in turn, could use their dividends to make their own decisions about charitable giving.

NCUA acknowledges that there may be cases where an FCU may want to contribute to a worthy cause or activity that is not part of or sponsored by a 501(c)(3) organization and that boards of directors should have the discretion to do so. Examples that appear appropriate would be good will, scholarships, not for profit projects as contributing to a community sports team, local clean-up projects, or community festivals or fairs. Accordingly, the final rule permits FCUs to make donations to recipients without regard to their status as 501(c)(3) organizations. The reasonableness of a donation will depend on the size and financial condition of the FCU. Finally, FCUs should be aware that, while the final regulation does not require that recipients be 501(c)(3) organizations, the regulation is not authority for contributions to candidates for a trade association or credit union league office or for other political contributions which, as noted in the preamble to the proposed regulation, are governed by the Federal Election Campaign Act (2 U.S.C. 441b).

Twenty-one commenters stated that limiting donation recipients to

organizations that are located in or conduct their activities in a community in which the FCU has a principal place of business is too restrictive and could exclude organizations and causes that are otherwise worthy of receiving donations from FCUs. The typical examples noted by commenters were organizations serving victims of distant natural disasters such as hurricanes or earthquakes and well-known national organizations that may not have a local office near the FCU. Most of these commenters favored removing the restriction from the regulation while others only suggested that it be broadened to include donation recipients located or conducting activities anywhere the FCU has members. The final rule, consistent with IRPS 79–6 and the proposed rule, permits contributions to national charitable organizations such as the Red Cross which, as needed, conduct activities in the community where the credit union is located and, therefore, would qualify as permissible recipients.

One commenter noted that the proximity requirement is particularly restrictive for some community chartered credit unions, especially those in rural areas. NCUA believes that any organization located or conducting activities within the geographic boundaries of a community chartered credit union is, by definition, located in the community in which the FCU has a principal place of business and would be eligible to receive contributions under the final regulation. To provide additional flexibility and avoid questions that could arise about whether a particular office or branch of an FCU is a ''principal'' place of business, the Board has decided to delete the word ''principal'' from this description in the final rule. By stating in the final regulation that a recipient be located or conduct activities in a community where the FCU has a place of business, the Board means a branch or office of the FCU. Place of business would not, however, include an ATM location.

Another commenter noted that members of some multiple group FCUs are spread over large geographic areas and contended that there may be members located far from any of the FCU's principal places of business. Credit unions generally locate their places of business where a relatively significant number of their members will have access to services. NCUA recognizes an FCU's interest in serving communities where its members reside or carry on their activities through charitable donations and believes there should be flexibility in construing the term ''community.'' Donating to recipients in areas where relatively few members are located, however, would not serve the needs of the FCU's community. NCUA believes that limiting donation recipients to organizations located in or conducting activities in a community in which the FCU has a place of business helps to ensure that the FCU's charitable donations will be used to serve the needs of communities where its members are located.

Finally, without regard to the location of the organization, NCUA has maintained in the final regulation the provision from the proposed rule that permits FCUs to make charitable donations to organizations that operate primarily to promote and develop credit unions even if the organization is not located or does not conduct activities in a community where the FCU has a place of business. For these contributions to be permissible, the final rule retains the requirement that these organizations be 501(c)(3) organizations.

Comments on Proposed Section 701.25(b)

Twelve commenters suggested that an FCU's board of directors should be permitted to approve a budget for charitable donations and delegate authority to other FCU officials to allocate these funds. The preamble to the proposed rule stated that this would be an appropriate approach. Some commenters suggested including this in the regulation and the final rule incorporates this provision. Seven other commenters suggested that an FCU's board of directors should be permitted to delegate authority to make charitable donations to other FCU officials, including complete discretion to determine donation amounts without the board approving a budget for this purpose. While delegation of the approval of the recipients of charitable donations within an FCU board-approved budget category is permitted, the NCUA Board has rejected complete delegation without a budget item being approved by the FCU's board because it believes that an FCU's decision as to the amount of donations is a significant one that warrants the consideration of its board of directors.

Other Comments

Ten commenters stated that NCUA oversight of contributions and donations is more appropriately accomplished through guidelines, as opposed to regulations. Four commenters stated that charitable giving should not be the subject of NCUA oversight at all. The NCUA Board notes that FCUs do not have the express authority to make contributions or donations. IRPS 79–6 was a formal ruling by the NCUA Board regarding the incidental power of FCUs that has permitted them to make donations and contributions. As noted in the preamble to the proposed rule, NCUA's foremost intention in incorporating IRPS 79–6 into its regulations is to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations.

The NCUA notes that this final rule provides broad discretion and flexibility for FCUs in determining the amount, the administration, and recipients for contributions but the incidental power to make contributions is not unlimited. The NCUA believes that contributions and donations may raise safety and soundness concerns and deserve regulatory oversight. The limitations and requirements in the final rule balance the interests of FCU members with the responsibility of FCU boards of directors to exercise their fiduciary responsibility to make independent and prudent decisions about contributions and donations.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule only applies to federal credit unions. NCUA has determined that the proposed amendment does not constitute a significant regulatory action for purposes of Executive Order 12612.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule does not constitute a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Charitable contributions, Credit unions.

By the National Credit Union Administration Board on April 15, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended by adding § 701.25 to read as follows:

§ 701.25 Charitable contributions and donations.

(a) A federal credit union may make charitable contributions and/or donate funds to recipients not organized for profit that are located in or conduct activities in a community in which the federal credit union has a place of business or to organizations that are tax exempt organizations under Section 501(c)(3) of the Internal Revenue Code and operate primarily to promote and develop credit unions.

(b) The board of directors must approve charitable contributions and/or donations, and the approval must be based on a determination by the board of directors that the contributions and/or donations are in the best interests of the federal credit union and are reasonable given the size and financial condition of the federal credit union. The board of directors, if it chooses, may establish a budget for charitable contributions and/or donations and authorize appropriate officials of the federal credit union to select recipients and disburse budgeted funds among those recipients.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Federal Aviation Administration Policy on Enforcement of the Hazardous Materials Regulations: Penalty Guidelines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: General statement of policy.

SUMMARY: This document states that FAA policy on determining the sanction amounts in FAA enforcement actions addressing violations of the Department of Transportation Hazardous Material Regulations (HMR). This policy statement provides guidance for agency personnel in the exercise of the FAA's prosecutorial discretion in enforcement cases concerning transportation of hazardous materials by air. The guidance should aid in analysis of the facts and circumstances of each case so as to arrive at an appropriate sanction in light of the statutorily defined penalty considerations. The analytical framework should also promote a relative consistency in determining civil penalties for violations of the HMR.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Wilkening, Office of Civil Aviation Security, Dangerous Goods and Cargo Security Division, telephone: (202) 267–9864, facsimile (202) 267–5760, email: Bill.Wilkening@faa.gov, mailing address: ACO–800, 800 Independence Avenue, S.W., Washington, D.C. 20591, or Allan H. Horowitz, Enforcement Division, Office of the Chief Counsel, telephone (202) 267–3137, facsimile (202) 267–5106, email: *Allan.Horowitz@faa.gov*, mailing address: AGC–300, 800 Independence Avenue, S.W., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION:

Background

Congress determined that the unregulated transportation of hazardous materials constitutes a threat to public safety in all forms of transportation. Congress addressed that threat in 1974 by enacting the Hazardous Materials Transportation Act (HMTA). By 1990, Congress determined that effective enforcement of the HMTA required more severe action, and enacted the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law No. 101–615, 1990 U.S. Code Congress. & Admin. News 104 Stat. 4605. The primary effect of this 1990 revision of the HMTA was to raise the maximum civil penalty for violation of any regulation enacted under the HMTA to $25,000, and, for the first time, to require a $250 minimum penalty for any such violation. The HMTA was recodified in 1994 and is now referred to as the ''Federal hazardous material transportation law,'' 1994 U.S. Code Congress. & Admin. News 108 Stat. 759, codified at 49 U.S.C. 5101–5127. In the 1994 recodification, Congress specifically stated that the recodification created no substantive change to the earlier form of the statute.

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, provides a mechanism for adjustments for monetary civil penalties for inflation in order to maintain the deterrent effect of monetary civil penalties and promote compliance with the law. Under the statute, the new civil penalty maximums cannot be applied unless they are implemented by regulation. On December 20, 1996, the FAA published a final rule (61 FR 6744), implementing the statute for each civil penalty subject to the FAA's jurisdiction. On January 21, 1997, the FAA published a correction to the final rule (62 FR 4134). The final rule is codified at 14 CFR Part 13, Subpart H. Pursuant to 14 CFR 13.305(d), the maximum civil penalty that may be assessed for a violation of the Federal hazardous material law or a hazardous material regulation is now $27,500.

Congress assigned the responsibility for the enforcement of the Federal hazardous material transportation law to the Secretary of Transportation. Within the Department of Transportation, the Research and Special Programs Administration (RSPA) adopts the Hazardous Materials Regulations (HMR), 49 CFR parts 171 through 178, which govern the transportation of hazardous materials (Hazmat). Although RSPA has some enforcement responsibilities, the responsibility for enforcing the HMR with respect to civil aviation is delegated by the Secretary of Transportation to the FAA. 49 CFR 1.47(k).

The HMR set forth regulations for the transportation of Hazmat. A knowing violation of the statute or of the HMR can support the assessment of a civil

penalty between $250 and $27,500. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation; or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. 49 U.S.C. 5123(a)(1)(A). The civil penalties authorized under the statute apply to EACH violation of any regulation set forth in the HMR. Moreover, under the statute, each continuing violation of the HMR can constitute a separate violation for each day a violation continues. In section 5124 of the statute, Congress prescribed criminal penalties for a willful violation of the Federal hazardous material transportation law or the HMR; willful violations require evidence of both knowledge of the laws and regulations and intent to violate them.

Part 13 of the Federal Aviation Regulations—Investigative and Enforcement Procedures (14 CFR Part 13) governs the procedures applicable to enforcement of the HMR by the FAA. Hazmat violations occurring on or after August 2, 1990, may be dismissed by an administrative law judge (ALJ) if a Notice of Proposed Civil Penalty has not been issued within 2 years of the violation, unless good cause for delay has been shown. 14 CFR 13.208(d).

Consideration of Statutory Criteria

In determining the sanction to be assessed, penalty criteria set forth in 49 U.S.C. 5123 must be considered. These criteria are the nature, circumstances, extent, and gravity of the violation, the degree of culpability of the violator, any history of past violations, the ability to pay, any effect on the ability to continue to do business, and other matters as justice requires. Some of these considerations already are factored to some extent into the categories in the Hazardous Material Sanction Guidance Matrix. The statutory factors are further considered under the weighting analysis that is performed to indicate the amount of civil penalty within the appropriate range, i.e., at the minimum, moderate, or maximum portion of the sanction range. To comply with the underlying purposes of the Federal hazardous material transportation law and HMR, a sanction should be imposed that is sufficiently deterrent but not excessive.

The Hazardous Materials Sanction Guidance is designed to promote better consistency so that similar penalties are imposed in similar cases. The Matrix ranges are intended to reflect the nature, circumstances, extent, and gravity of the case as compared with other types of cases. Each case, however, must be evaluated on its own facts. A sanction may differ from the Matrix ranges when the facts and circumstances of a case support either a greater or lesser penalty. When a special agent believes that a penalty should exceed the Matrix ranges, the agent should consult with legal counsel before further processing of the Enforcement Investigative Report (EIR). This consultation is not necessary in the case of a recommended penalty that is less than that provided in the Matrix. In either situation, the basis for the decision to go outside the ranges should be explained in detail.

Violations of Part 175 of the HMR, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix. However, such operators often offer hazardous materials for air transportation, as well as accept and transport them. For this reason, such operators may be liable for violations both as a business entity within the Hazardous Materials Sanction Guidance Matrix, as well as specific air carrier violations.

Use of the Sanction Guidance

This guidance provides agency personnel with a systematic way to evaluate a case and arrive at an appropriate penalty, considering all the relevant statutory criteria including any mitigating and aggravating circumstances. Statutory considerations have been factored into the various ranges within the Sanction Guidance Matrix. Determination of where a sanction lies within these ranges is aided by a series of weighting questions that probe the various aggravating and mitigating factors that may exist in a case.

First, the weighting analysis is performed. Agency personnel respond to a series of questions to determine the aggregate weight of the case. The aggregate weight of the case helps determine the sanction amount of each violation group within the established ranges of the Matrix.

It is important to note that determination of where the sanction lies within the Matrix is not the result of a mathematical computation. Evaluation of the case is based on the totality of the facts and circumstances. Generally, if the answer to a particular question represents a more significant aspect of a case, greater consideration should be given to that answer. For example, violations involving an extremely dangerous substance, even in minute quantities, might warrant a penalty at the maximum end of the range or even a penalty exceeding the Matrix ranges.

Under the Sanction Guidance Matrix, agency personnel determine the category of violator the person falls within (e.g., business entity that regularly offers, accepts, or transports Hazmat) and the offense category (e.g., undeclared shipment within Hazmat quantity limitations). The sanction ranges under the various violator categories take into account the relative culpability of the violator. Similarly, the offense categories address the nature, circumstances, and gravity of the particular offense. After determining the appropriate categories and intersecting box of the Matrix, agency personnel then determine which subcategories of offenses (e.g., shipping papers) are alleged to have been violated. Based on the weighting analysis performed in Section I, an appropriate penalty is assigned for each of the applicable violation groups. The penalty amount for each relevant violation group is added together to reach the recommended sanction.

Under Section III of the Guidance, the special agent then considers other relevant factors, including evidence of corrective action. A recommended sanction may be reduced prior to the issuance of a Notice of Proposed Civil Penalty when there is adequate reliable information concerning the corrective actions taken by a respondent. Corrective actions that justify reduction of the recommended penalty must exceed the minimum legal requirements. The special agent also attempts to provide information concerning the alleged violator's size, financial condition, and ability to pay a recommended sanction.

When an EIR is forwarded to legal counsel for enforcement action, counsel with give appropriate consideration to the recommended sanction. FAA legal counsel will also review the factors, analysis, and determinations under the Hazardous Materials Sanction Guidance. Any basis for deviating from the recommend sanction is ordinarily explained to, and discussed with, the investigating special agent. Final determination of the sanction amount proposed in the Notice of Proposed Civil Penalty is ordinarily a product of joint decisonmaking and approval of the investigating agent and the legal office.

Federal Aviation Administration Hazardous Materials Sanction Guidance

This Sanction Guidance is divided into three sections:

I. Case Analysis,
II. Utilization of the Sanction Guidance Matrix (Matrix), and
III. Consideration of other Statutory Factors.

The Sanction Guidance Matrix is contained in Figure 1 and the Risk Categories are contained in Figure 2.

I. Case Analysis (Evaluation of Statutory Assessment Factors)

This section contains a series of questions designed to assist special agents and attorneys in evaluating a particular case. The question review factors involving the nature, circumstances, extent and gravity of the violation, the violator's degree of culpability, and the violator's history of prior violations. Some of these factors are already considered to some extent within the various categories of the Sanction Guidance Matrix. The questions in this section provide additional consideration of the statutory factors and examine the existence of aggravating and mitigating factors in a case.

The agent/attorney answers each question in Section I and determines if a relative weight of minimum, moderate, or maximum should be assigned based on the response to the question. With the exception of Question A.1., not all questions will apply to a given fact situation. Question A.1., which addresses the nature of the hazardous material(s) involved, is the only question that always receives a ''yes'' answer to one of its subquestions and is considered in every case. The aggravating or mitigating factors addressed in the questions only apply to the case when the question receives a ''yes'' response. Questions receiving a ''no'' response do not affect the weighting of the case and are not considered. For example, if the violation resulted in harm to persons or property, that may be an aggravating factor in the case. However, the fact that the violation did not result in injury or damage, is *not* a mitigating factor and should not result in penalty mitigation. In many instances, the answers to most or all of the questions will be ''no'' and the only relevant weighting factor in this section will be the risk category of the material identified in Question A.1.

In determining the final aggregate weight of the case, the responses to each of the questions do not have to be equally considered. Determination of whether the overall case should have a minimum, moderate, or maximum weight cannot be determined with mathematical certainty. Generally, if the answer to a question demonstrates that the factor at issue represents a more significant aspect of the case, greater consideration is given to that factor. The final aggregate weight is based on the totality of the facts and circumstances of the case. Once determined, the final aggregate weight is then utilized to arrive at the recommended sanction for each applicable violation group on the Sanction Guidance Matrix (Fig. 1).

A. The Nature, Circumstances, Extent, and Gravity of the Violation

(Factors Concerning the Shipment)

1. What Material(s) Was Offered, Transported, or Accepted for Air Transportation?

(Figure 2 divides hazardous materials of particular classes, divisions, and packing groups into three risk categories: Category A, Category B, and Category C. Find the material(s) at issue in Figure 2 and answer the questions below.)

a. Is the material(s) offered, transported, or accepted in Category A?
If yes, assign a Maximum weight.

b. Is the material(s) offered, transported, or accepted in Category B?
If yes, assign a Moderate weight.

c. Is the material(s) offered, transported, or accepted in Category C?
If yes, assign a Minimum weight.

Guidance Note: The categories in Figure 2 represent the inherent risk of danger to air transportation posed by the material. If there is more than one type of hazardous material involved in the shipment, answer this question using the hazardous material in the highest risk category.

2. What Quantity of the Material(s) Was Offered, Transported, or Accepted for Air Transportation?

a. Did the package(s) exceed the authorized quantity limitations by a *significant* amount?
If yes, consider a Moderate or Maximum weight depending on the degree to which the limitation was exceeded.

Guidance Note: The Matrix, discussed in Section III, takes into account the factual situations where the quantity limitations for the material are exceeded. This part of the analysis is intended to determine whether further aggravating circumstances exist where quantity limitations are exceeded by a significant amount. Whether this factor is assigned a moderate or maximum weight will depend on the degree by which the quantity limitation was exceeded.

Example: The quantity limitation for gasoline on a passenger plane is 5 liters per package. If a violator offers 30 liters in a single package on a passenger plane, this may result in a maximum weight for this factor.

b. Were there multiple packages in the shipment?
If yes, consider a Moderate or Maximum weight, depending on the number of packages and total amount of hazardous material being transported in violation.

Guidance Note: A package means a packaging plus its contents. There may be multiple packages in one shipment or overpack. Multiple packages often represent multiple violations. Under the Sanction Guidance, this fact is considered an aggravating circumstance rather than a direct multiplier of the sanction for each violation. Each case, however, must be evaluated on its particular facts. A very large number of packages may result in such an egregious case that the overall weight of the case is so high that a penalty beyond the maximum point in the range is warranted.

An investigation will occasionally reveal several shipments from the same offeror over a period of several days, all of which involve violations of the HMR. These independent acts of offering usually are consolidated into one EIR and addressed in one Note of Proposed Civil Penalty. However, for purposes of determining the appropriate sanction, each separate shipment with a separate air waybill or shipping papers, separate destination, and/or any other evidence establishing it as a separate shipment is ordinarily considered as a separate incident for purposes of applying the sanction guidance analysis. It is suggested that the separate shipments be treated as individual counts in the EIR and the Notice of Proposed Civil Penalty, with each count having its own sanction derived from application of this guidance. Note, there must be sufficient evidence to support each count.

3. Did the Shipment Cause Damage or Harm to Persons or Property, or Interfere With Commerce?

If yes, consider a Moderate or Maximum weight.

Guidance Note: The fact that no damage occurred as a result of the shipment is not a mitigating factor. However, damage or harm may aggravate the nature, circumstances, extent, and gravity of the violation. Depending on the degree of damage caused by the shipment and/or the existence of other aggravating factors, departure from the ranges may be justified.

B. Violator's Degree of Culpability

(The Matrix, Figure 1, considers the relative culpability of the violator. This section of the analysis further evaluates the degree of culpability of the violator.)

1. Is the Violator the Manufacturer of the Hazardous Material?

If yes, consider a Maximum weight.

Guidance Note: A manufacturer of a hazardous material is expected to have complete knowledge of the nature of the hazardous material and thus, a high degree of culpability will ordinarily be imputed to it.

2. Did Someone Other Than the Violator Prepare the Shipment for Transportation?

If yes, consider a Minimum or Moderate weight.

Guidance Note: Facts supporting an affirmative answer to this question may be cause to mitigate culpability and/or pursue a

separate enforcement action against other responsible parties who handled the shipment. A shipper that reships materials received from another person in the same packaging is independently responsible for ensuring the shipment complies with the HMR. Nevertheless, the reshipper is generally considered to have a lesser degree of culpability for compliance of the package as received. However, if the reshipper unpacks and/or repackages the shipment, the reshipper remains as culpable as the original shipper and generally is not accorded mitigation under this weighting factor. (For purposes of this section, a ''reshipper'' refers to a person, other than the original offeror, who offers a shipment of hazardous material for transportation.)

3. Did the Violator Reasonably Rely on Incorrect Information From Another Source?

If yes, consider a Minimum weight.

Guidance Note: Detrimental or reasonable reliance on another party may be a mitigating factor when considering the violator's degree of culpability. For example, reliance on an inaccurate Material Safety Data Sheet (MSDS) may be mitigating.

4. Does the Violator Have a History of Previous HMR Violations?

If yes, consider a Moderate or Maximum weight.

Guidance Note: To establish a violation history, a prior violation must be an actual finding of violation pursuant to a legal enforcement action. Special agents should attempt to determine the corporate structure of the violator and whether other business entities or names are or have been used by the entity in order to obtain a complete violation history. The number and age of violations should be considered. Ordinarily, findings of violation more than 5 years old carry less weight, unless a continuing pattern of violation exists.

C. Other Factors

Each case must be evaluated on its particular facts. As such, many cases may present unique scenarios and aggravating or mitigating factors that are not routinely seen. If an aggravating or mitigating circumstance exists that is not adequately addressed elsewhere in the sanction guidance, it may be included and assigned a weight under this section. The factor should be clearly identified and explained in the analysis portion of the EIR and carefully scrutinized by legal counsel.

Guidance Note: For example, a shipment of a single package containing several different hazardous materials may present an aggravating factor. The degree of seriousness of this factor will increase if the hazardous materials are incompatible with each other and, therefore, create an increased risk.

Mitigating factors may also exist that have not been adequately considered. For example, a shipment containing a *de minimis* quantity of material or an amount that would have qualified under the small quantity exception of § 173.4 may present a mitigating factor if as a result there was a reduced risk to safety in transportation.

D. Determine the Final Aggregate Weight of the Case

All the responses/weights are evaluated to determine a final aggregate weight of the case (Minimum, Moderate, and Maximum). Questions receiving a ''no'' response will not be included in this evaluation. To determine the final aggregate weight, the agent/attorney must exercise his/her discretion in light of the statutory factors and knowledge of the particular facts of the case. The facts of the particular case will dictate the relative importance of each of the weighting factors in reaching a final aggregate weight. The final aggregate weight should be decided as a result of careful analysis, not a mathematical averaging. It is possible that a single weighting factor may outweigh all others. The agent/attorney's analysis should always be explained in this regard.

Example: A case involving a hazardous material in the lowest risk category may be evaluated to have a maximum weight because of the large quantity shipped or the damage resulting from the shipment.

II. Utilize the Matrix (Figure 1)

The sanction ranges under the offeror and offense categories of the Sanction Guidance Matrix reflect the relative culpability of the violator and the nature, circumstances, extent, and gravity of the case. Consideration of these particular statutory factors under the Federal hazardous material transportation law is built into the Matrix. Further analysis of the statutory factors is required to determine the appropriate sanction within the ranges established under the Matrix. This analysis is performed in Section 1. After determining the final aggregate weight of the case under the Section 1 analysis, that weight is applied to the appropriate matrix range to identify the recommended sanction amount for each of the relevant violation groups and for the case as a whole. Although the Notice of Proposed Civil Penalty may cite numerous violations of a particular part or subpart of the HMR, unless upward departure is justified, a single penalty amount for each violation group is ordinarily used to reach the full sanction.

A. Instructions

1. Identify the appropriate category for the type of entity and the nature of the offense involved in the case. Refer to the Definitions Section that follows the Matrix in Figure 1 for guidance. Go to the intersecting box and identify the applicable sanction range for each violation group.

2. Apply the conclusion reached in the Section I weighting analysis to assign a sanction amount within the minimum, moderate, or maximum portion of the sanction range for each relevant violation group. The recommended civil penalty at this stage is the sum of the sanctions for each of the applicable violation groups. A sanction should not be assessed for a violation group if there have been no violations of that part or subpart of the HMR. The sanction amount for each violation group need not be identical but ordinarily is within the portion of the particular sanction range that represents the overall weight of the case.

3. Departure from the Matrix ranges—The Matrix is designed to cover the majority of cases involving violations of the HMR. The facts and circumstances of a particular case, however, may justify either an upward or downward departure from the Matrix ranges. This sanction guidance anticipates and encourages departure from the Matrix ranges when justified. A case involving violations in which the nature, circumstances, extent, and gravity of the incident are particularly severe or egregious, may justify upward departure from the Matrix. If the investigating agent believes, based upon the facts of a case, that a penalty should exceed the Matrix ranges, the agent should consult with legal counsel before further processing of the EIR. Conversely, the investigating agent may believe that mitigating factors justify a downward departure from the Matrix range. Consultation with legal counsel is not necessary in the case of a recommended penalty that is less than that provided in the Matrix. In either situation, however, the agent is to provide a detailed explanation of the basis for the decision to go outside the ranges.

4. Violations of Part 175 regulations, which establish particular requirements for air carriers and other aircraft operators, are contained in a separate matrix. However, such operators often *offer* Hazmat for air transportation as well as accept and transport it. As such, the operator may be liable for violations as a business entity within the main Matrix as well as for the specific Part 175 violations.

III. Impact of Other Statutory Factors

The Federal hazardous material transportation law also requires consideration of a violator's ability to pay a civil penalty, the impact of the civil penalty on the violator's ability to

continue to do business, and other matters that justice requires. Consideration of these factors may result in adjustment of the recommended civil penalty calculated in Section II. In situations where the agent or attorney is in possession of mitigating information, such as inability to pay the recommended civil penalty or corrective action taken, reduction of the recommended penalty may be appropriate. Mitigating information should be sufficiently reliable, uncontroverted, and documented in order to support reduction of the recommended civil penalty prior to issuing the Notice of Proposed Civil Penalty.

A. Ability To Pay/Continue in Business

Historically, the FAA has considered these factors after the issuance of the Notice of Proposed Civil Penalty due to the absence of reliable financial information on which to base a reduction prior to the issuance of a Notice. This Sanction Guidance recommends that the special agent make efforts to obtain reliable information regarding the violator's size and financial condition for review prior to the issuance of a Notice. This information will be transmitted to the legal office for consideration. It is recognized that it may not always be possible for the special agent and/or attorney to obtain reliable financial information on a particular respondent, that financial circumstances change and that information may be provided after the issuance of the Notice that may warrant further consideration of a respondent's ability to pay.

1. The investigating agent will attempt to include financial information as an exhibit in the EIR. It is anticipated that this information, if available, will be obtained from reliable financial data bases. Financial documentation should include, but need not be limited to, information concerning the violator's corporate structure, business address, officers, number of employees, and gross revenues.

2. The investigating agent provides a statement or comment with respect to the financial information obtained but ordinarily does not evaluate the financial condition of a respondent with respect to its ability to pay a proposed civil penalty. The investigating agent's statement should encompass areas such as the number of employees, gross revenues, and nature of business of the violator.

3. FAA legal counsel reviews the financial information provided in the EIR and evaluates its sufficiency and relevance to the recommended civil penalty. Legal counsel may determine if more current information exists concerning the financial condition of a respondent and if that information substantially differs from the information available at the time of preparation of the EIR. If there is a basis for determining that the recommended sanction is inappropriate based upon the financial information provided in the EIR, the recommended sanction is adjusted prior to issuance of the Notice of Proposed Civil Penalty. This is a preliminary consideration of a company's ability to pay. As such, pre-Notice adjustment of a recommended civil penalty does not preclude further consideration of a respondent's financial claims after issuance of the Notice.

4. If legal counsel determines that a respondent qualifies as a small business entity, counsel may consider that status under the Small Business Regulatory Enforcement Fairness Act (SBREFA) with respect to the appropriateness of the recommended civil penalty. A respondent's status as a small business entity may be considered in conjunction with analysis of the statutory factors.

B. Corrective Action

The most common ''other matter'' that the FAA takes into consideration is corrective action. Corrective action that results in mitigation is remedial action that exceeds the minimum legal requirements. The primary factors in determining the appropriate amount of penalty reduction are the extent and timing of the corrective action. In other words, mitigation is determined on the basis of how much corrective action was taken and how quickly the action was taken. Systemic change intended to prevent future violations should be given greater consideration. Similarly, corrective action that commences upon the violator's first notice of the violation ordinarily is given greater credit than corrective action that commences only after the Notice of Proposed Civil Penalty has been issued.

Mitigation of a recommended civil penalty based upon corrective action should be referenced in the Notice of Proposed Civil Penalty so that the respondent is on notice that credit already has been given for said action.

MATRIX AND DEFINITIONS

[Figure 1]

Offense categories	A. Individual	B. Business entity	C. Business entity that uses or handles Hazmat in the course of business	D. Business entity that regularly offers, accepts, or transports Hazmat
I. Declared Shipment:				
1. Shipping Papers	250–500	250–1,000	500–2,000	1,000–5,000
2. Labels	250–500	250–1,000	500–2,000	1,000–5,000
3. Markings	250–500	250–1,000	500–2,000	1,000–5,000
4. Packaging	250–500	250–1,000	500–2,000	1,000–5,000
5. Training	.....	250–1,000	500–2,000	1,000–5,000
6. Emerg. Response	250–500	250–1,000	500–2,000	1,000–5,000
7. Release into Environ	250–500	250–1,000	500–2,000	1,000–5,000
8. Other	250–500	250–1,000	500–2,000	1,000–5,000
II. Undeclared Shipment Within Hazmat Quantity Limitations:				
1. Shipping Papers	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000
2. Labels	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000
3. Markings	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000
4. Packaging	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000
5. Training	.....	1,500–7,500	2,500–10,000	5,000–12,000
6. Emerg. Response	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000
7. Release into Environ	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000
8. Other	250–1,000	1,500–7,500	2,500–10,000	5,000–12,000

MATRIX AND DEFINITIONS—Continued

[Figure 1]

Offense categories	A. Individual	B. Business entity	C. Business entity that uses or handles Hazmat in the course of business	D. Business entity that regularly offers, accepts, or transports Hazmat
III. Undeclared Shipment Hazmat Forbidden on, or exceeds qty limits for, Passenger Aircraft:				
1. Shipping Papers	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
2. Labels	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
3. Markings	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
4. Packaging	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
5. Training		5,000–15,000	7,500–20,000	10,000–27,500
6. Emerg. Response	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
7. Release into Environ	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
8. Other	500–5,000	5,000–15,000	7,500–20,000	10,000–27,500
IV. Undeclared Shipment Forbidden on, or exceeds qty limits for, All Aircraft:				
1. Shipping Papers	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
2. Labels	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
3. Markings	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
4. Packaging	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
5. Training		7,500–27,500	10,000–27,500	15,000–27,500
6. Emerg. Response	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
7. Release into Environ	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
8. Other	500–27,500	7,500–27,500	10,000–27,500	15,000–27,500
V. Intentional or Deliberate Violation	Consult Legal	Consult Legal	Consult Legal	Consult Legal

Air carrier and other aircraft operator violations	E. Group I & II air carriers and other aircraft operators	F. Group III & IV air carriers and other aircraft operators
Failure to comply with Parts 171, 172, or 173 requirements of the HMR as an offeror of Hazmat	(1)	(1)
Improper acceptance of Hazmat for air transportation (i.e., quantity, labeling, marking, packaging, and shipping papers) See 49 CFR 175.30(a) (1)–(4)	5,000–27,500	2,500–15,000
Failure to inspect Hazmat shipment properly. See 49 CFR 175.30 (b), (c), (d), (e)	10,000–27,500	5,000–15,000
Improper storage/securing of Hazmat aboard aircraft	10,000–27,500	5,000–15,000
Failure to provide Hazmat training, maintain records of training, or meet minimum requirements for Hazmat training	10,000–27,500	5,000–15,000
Failure to notify FAA properly of incident/discrepancies in Hazmat shipment	5,000–15,000	1,000–5,000
Failure to provide notice to the pilot-in-command	5,000–15,000	1,000–5,000
Other Part 175 violations	5,000–15,000	1,000–5,000

[1] Use main Matrix.

Definitions

(a) *Air Carrier and Other Aircraft Operator Groups (I, II, III, IV)*—Air carriers and other aircraft operators are divided into two categories for purposes of determining an appropriate sanction. These categories track the air carrier groups established in FAA Order No. 2150.3A, Appendix 1, Compliance/Enforcement Bulletin 92–1, but also includes any operator of an aircraft that is operated ''in commerce'' as defined in the Federal hazardous materials law, including Part 129 Foreign Air Carriers, Part 125 Operators, and Part 91 Operators. Group I is comprised of air carriers and other aircraft operators with annual operating revenue of $100,000,000 or more. Group II is comprised of air carriers and other aircraft operators that hold Part 121 certificates or have 50 or more pilots or operate 25 or more aircraft, with annual operating revenue of less than $100,000,000. Group III is comprised of air carriers and other aircraft operators that do not meet the criteria for Group II with (1) 6 to 49 pilots, or (2) 6 to 24 aircraft. Group IV is comprised of all other air carriers or aircraft operators not meeting the criteria for Groups I, II, or III.

(b) *Business Entity*—The violator is a business, corporation, partnership, Sub-S Corporation, sole proprietor, association, or any type of commercial entity. An individual who offers a hazmat shipment in air transportation in the course of his/her self-owned business falls into this category. Includes all entities defined under the HMR's definition of ''person,'' (49 CFR 171.8) with the exception of an individual as defined herein.

(c) *Business Entity that Regularly Offers, Accepts, or Transports Hazardous Materials in the Course of its Business.*—A manufacturer or distributor of Hazmat falls into this category. A freight forwarder would also fall into this category. The aspect of ''regularly'' offering covers a business entity that offers Hazmat with some anticipated frequency or purports to do so, e.g., a catalogue company that offers hazardous material to its customers would fall into this category, even though its actual sale or transportation of the Hazmat is infrequent or limited.

(d) *Business Entity that Uses, Handles Hazmat in the Course of Its Business*—This category encompasses the business that utilizes Hazmat in its business but does *not* offer it for transportation on a regular basis, as described above. For example, a manufacturer of a non-Hazmat product that uses Hazmat in the manufacturing process could fall into this category. It must be established that

the company ordinarily does not offer the Hazmat it utilizes for transportation, and the shipment in this instance represents an isolated incident. This type of business is held to a higher standard than the business entity that has no regular involvement with Hazmat. The described business entity receives the subject hazardous material in transportation and uses it in its business; thus, it is clearly on notice of the hazardous nature of the material and the regulatory requirements to which the Hazmat is subject.

(e) *Declared Shipment*—A declared shipment, for purposes of this matrix only, is one that complies with one or more of the communicative requirements of the HMR, i.e., it has markings, labels, and/or partially-correct shipping papers. A package that has shipping papers that declare the contents as hazardous material but is otherwise not marked or labeled falls into this category. Similarly, a properly marked and labeled package that lacks shipping papers also falls into this category. A case falls into this category where there is clear indication that the offeror made some attempt to give notice of the hazardous nature of the shipment.

(f) *Forbidden or Exceeds Quantity Limits for Passenger Aircraft*—A shipment falls into this category if the quantity of Hazmat per package exceeds the quantity limitations for passenger-carrying aircraft or if the particular hazardous material is forbidden in air transportation on passenger aircraft.

(g) *Forbidden on or Exceeds Quantity Limits for All Aircraft*—A shipment will fall into this category if the quantity of hazardous material per package exceeds the allowable amount for both passenger and cargo aircraft or the Hazmat is absolutely forbidden in air transportation.

(h) *Hazmat*—A ''hazardous material,'' as defined in 49 CFR 171.8, includes and is interchangeable with the term ''dangerous goods, '' as used in the International Civil Aviation Organization (ICAO) Technical Instructions.

(i) *Individual*—An individual who offers a shipment of hazardous material in his/her personal capacity without any business purpose or as part of a commercial enterprise on the part of the individual.

(i) *Intentional or Deliberate Violation*—A shipment falls into this category when there is evidence that the offeror, acceptor, air carrier, or aircraft operator had knowledge of the requirements of the HMR and willfully circumvented or attempted to circumvent those requirements. For example, an offeror who places a properly marked and labeled Hazmat shipment along with properly completed shipping papers, into an overpack marked as ''printed material,'' has committed an intentional or deliberate violation. In this type of case, the investigating agent shall consult with FAA legal counsel and follow agency guidance for potential criminal violations of the HMR.

(k) *Undeclared Shipment*—This is a shipment that has no indication of its hazardous material contents and/or no indication that the offeror communicated the hazardous nature of the shipment's contents to persons who accept or transport.

(l) *Within Hazmat Quantity Limitations*—The amount of hazardous material is within the quantity limitations per package as established in the § 172.101 Table (49 CFR 172.101) for the type of aircraft on which the shipment traveled. For example, if the shipment was offered for transportation on a passenger aircraft, the quantity of hazardous material was within the established limit for transportation by passenger aircraft. If the shipment was offered for transportation on a cargo aircraft, the quantity limitations for cargo aircraft apply.

RISK CATEGORIES

[Figure 2]

Category ''A'' (Maximum Weight)

Category ''A'' materials are materials that when released in the confines of an aircraft can potentially have a catastrophic effect on an aircraft's ability to continue safe flight, resulting in a crash or emergency landing causing injury or death to passengers and flightcrew, as well as persons on the ground.

Class 1	Explosives: Division 1.1, 1.2, 1.3.
Class 2	Compressed Gases All 2.1, 2.2 with Subsidiary Risk 5.1 and All 2.3 PIH Zones A–D.
Class 3	Flammable Liquids PG I, II, and (PIH).
Class 4	Division 4.1 Flammable Solids PG I, & (Matches).
	Division 4.2 Spontaneously Combustible Materials PG I (Pyrophoric).
	Division 4.3 Dangerous When Wet PG I.
Class 5	Division 5.1 Oxidizing Liquids and Solids PG I, II, e.g., ''Chemical Oxygen Generators''.
	Division 5.2 Organic Peroxides PG II (Type A, B, C, or D).
Class 6	Division 6.1 Poisonous Liquids PG I (PIH).
Class 7	Cargo Aircraft Only Quantities on Passenger Aircraft.
Class 8	Corrosive Material Liquid PG I and (PIH).

Forbidden Materials (See 49 CFR 173.21 & ICAO Technical Instructions).

Forbidden Hazmat listed in Dangerous Goods Table 49 CFR 172.101.

Category ''B'' (Moderate Weight)

The materials listed in Category ''B'' are materials that may not pose an immediate threat to the safety of a flight, but can cause death or injury to persons due to unintended releases in aircraft cabin areas, and potential damage to aircraft structures over a longer period of time due to undiscovered releases on aircraft structural components.

Class 1	Division 1.4, 1.5, 1.6, All Compatibility Groups.
Class 3	PG III Flammable Liquids.
Class 4	Division 4.1 Flammable Solids PG II, III.
	Division 4.2 Spontaneously Combustible Materials PG III.
	Division 4.3 Dangerous When Wet PG II, III.
Class 5	Division 5.1 Oxidizing Liquids or Solids PG III.
	Division 5.2 Organic Peroxides (Type E, F, G).
Class 6	Division 6.1 Poisonous Liquids PG I, II (NON–PIH).
	Division 6.2 Infectious Substances.

RISK CATEGORIES—Continued

[Figure 2]

Class 7	Radioactive Materials, yellow label III, yellow label II, and white label I.
Class 8	Liquids PG II, III Solids PG I, II, III.

Category "C" (Minimum Weight)

The materials listed in Category "C" are materials that present the least amount of risk to the transportation system.

Class 2	2.2 Nonflammable Gas.
Class 6	Division 6.1 Packing Group III.
Class 7	All other RAM (LSA, LTD QTY, Instruments and Articles).
Class 9	Miscellaneous Dangerous Goods (ORM–D and Consumer Commodity).

Note: This guidance is not intended to replace the experienced judgment to a special agent who is convinced, based on the evidence and facts of a case, that the failure of an air carrier, shipper, freight forwarder, or passenger to follow established regulations has posed a risk to aviation safety.

Issued in Washington, DC on April 14, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–9983 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 240, 242 and 249

[Release No. 34–41297; File No. S7–12–98]

RIN 3235–AH41

Regulation of Alternative Trading Systems; Technical Amendment

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment and revised compliance date.

SUMMARY: The Securities and Exchange Commission is modifying the compliance dates for Rule 301(b)(3) and making a technical change to Rule 202.3. These and other rules and rule amendments relate to the regulation of alternative trading systems and exchanges and were published on December 22, 1998 (63 FR 70844). The effective date for the other rules and amendments published in 63 FR 70844 remains April 21, 1999, except for the effective date for §§ 242.301(b)(5)(i)(D) and (E) and §§ 242.301(b)(6)(i)(D) and (E), which remains April 1, 2000.

DATES: Effective Date: April 21, 1999 for amendment to § 202.3.

Compliance Date: Alternative trading systems must comply with § 242.301(b)(3) with respect to the 50 securities listed in Schedule A by August 23, 1999; with respect to the securities listed on Schedules A and B by September 28, 1999; with respect to the securities listed on Schedules A, B and C by April 25, 2000; and with respect to all securities by June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth King, Senior Special Counsel, at (202) 942–0140, Constance Kiggins, Special Counsel, at (202) 942–0059, and Kevin Ehrlich, Attorney, at (202) 942–0778, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1998, the Securities and Exchange Commission ("Commission") adopted new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume.[1] The effective date for most of these new rules and rule amendments is April 21, 1999. The Commission stated in the adopting release that, prior to April 21, 1999, it would publish a list of those securities with respect to which alternative trading systems must comply with Rule 301(b)(3) on April 21, 1999 and those securities with respect to which alternative trading systems must comply with Rule 301(b)(3) on August 30, 1999. Rule 301(b)(3) requires an alternative trading system to provide to a national securities exchange or national securities association, for inclusion in the public quotation system, the prices and sizes of its best priced buy and sell orders, that are displayed to more than one person, in each covered security in which the alternative trading system represents 5% or more of the total trading volume.[2]

II. Delay of the Compliance Dates for Rule 301(b)(3)

One major alternative trading system has indicated that it will be unable to comply with the requirements of Rule 301(b)(3) by the original compliance dates without putting the operation of its system at serious risk of failure. The operational failure of a major alternative trading system could interfere with the markets as a whole. Accordingly, the Commission believes it necessary to adjust the compliance dates for Rule 301(b)(3) as follows:

August 23, 1999: Compliance with Rule 301(b)(3) with respect to the 50 Nasdaq securities listed on Schedule A, attached in the appendix.

September 28, 1999: Compliance with Rule 301(b)(3) for the 50% of Nasdaq securities listed on Schedules A and B, attached in the appendix.

April 25, 2000: Compliance with Rule 301(b)(3) for the 75% of Nasdaq securities listed on Schedules A, B, and C, attached in the appendix.

June 20, 2000: Compliance with Rule 301(b)(3) for all Nasdaq securities.

Schedules A, B, and C were created by ranking all covered securities traded on Nasdaq by their January 1999 volume, and including an equal number of securities from each decile. Some securities that were not traded on Nasdaq in January 1999 may commence trading on Nasdaq subsequently. Alternative trading systems may wait until June 20, 2000 to comply with Rule 301(b)(3) with respect to these securities.

All other compliance dates for the rules and rule amendments adopted last December remain the same. The Commission encourages those alternative trading systems that are able to comply with Rule 301(b)(3) on April 21, 1999 to do so.

[1] Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[2] 17 CFR 242.301(b)(3). For purposes of Regulations ATS, a "covered security" includes all exchange-listed, Nasdaq NM securities, and Nasdaq Small Cap securities, other than debt and convertible securities. *See* Rule 11Ac1–1(a)(6), 17 CFR 240.11Ac1–1(a)(6); Rule 300(g), 17 CFR 242.300(g).

Alternative trading systems are reminded that Rule 301(b)(3) only requires alternative trading systems to ''provide to a national securities exchange or national securities association'' their best priced orders in covered securities in which they represent 5% or more of all trading volume.[3] Accordingly, in the absence of a mechanism for publicly displaying those alternative trading systems' orders in exchange-listed securities, alternative trading systems will not be violating Rule 301(b)(3) if alternative trading systems' best priced orders in those securities in which they trade 5% or more of the volume are not publicly displayed. When a mechanism is developed to display alternative trading systems' orders in exchange-listed securities, Rule 301(b)(3) requires them to cooperate in linking with the market or markets providing that mechanism. Under Section 553(d) of the Administrative Procedure Act,[4] publication of a substantive rule not less than 30 days before its effective date is required except as otherwise provided by the agency for good cause. Because the change extends compliance dates, the Commission finds that there is good cause for doing so.

III. Rule of Practice 202.3

On December 8, 1998, the Commission adopted changes to Rule of Practice 202.3(b)(2) regarding the processing of exchanges' applications for registration as national securities exchanges or exemption from registration based on such exchanges' limited volume of transactions. These amendments require the Commission to grant registration or institute proceedings to determine whether registration should be denied within 90 days of the date of filing of an application. Section 19(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), however, requires the Commission to grant an exchange's application for registration as a national securities exchange, or institute proceedings to determine whether registration should be denied, within 90 days of the date of publishing notice of the exchange's filing of such application. Consequently, the Commission is making a technical correction to Rule 202.3(b)(2) to conform to the time periods in the statute. The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,[5] that the amendment to Rule 202.3 relates solely to agency organization, procedures, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date of April 21, 1999 is also unnecessary.

IV. Findings

Section 23(a)(2) of the Exchange Act[6] requires the Commission to consider the anti-competitive effects of any rules it adopts, and to balance these effects against the benefits that further the purposes of the Exchange Act. Further, Section 2 of the Securities Act of 1933[7] and Section 3 of the Exchange Act,[8] as amended by the recently enacted National Securities Markets Improvements Act of 1996,[9] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the act will promote efficiency, competition, and capital formation. Because the amendments take steps to assure the fair and orderly activities of the national securities markets and make a conforming correction to a procedural rule, they do not have any anti-competitive effects and they serve to promote efficiency, competition, and capital formation, and are therefore in the public interest.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Securities.

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for Part 202 continues to read in part 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.

* * * * *

2. The last sentence of paragraph (b)(2) of § 202.3 is revised to read as follows:

§ 202.3 Processing of filings.

* * * * *

(b) * * *

(2) * * * Within 90 days of the date of publication of a notice of the filing of an application for registration as a national securities exchange, or exemption from registration by reason of such exchanges' limited volume of transactions (or within such longer period as to which the applicant consents), the Commission shall by order grant registration, or institute proceedings to determine whether registration should be denied as provided in § 240.19(a)(1) of this chapter.

Dated: April 16, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

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

Appendix

Schedule A

AERTA
AMXX
ASFI
ATEST
BARZ
BCGI
BGMR
BJCT
BPTM
BRIOF
BWCF
CFFC
CINRF
CLHB
CRTQ
EXAR
FRSH
FSFT
FUJIY
GBNK
GCTY
GILD
IMNX
INTC
JAGI
JBOH
JXSB
KASP
LAKE
LCAV
LVEN
LVMHY
MCSC
MILB
MPTBS
NETTW
PAWN
PCBC
PIXR
POSIF
PRTK
SBGI
SPCH
SSRIF
STNRF
TBCC

[3] 17 CFR 272.301(b)(3).

[4] 5 U.S.C. 553(d).

[5] 5 U.S.C. 553(B)(3)(A).

[6] 15 U.S.C. 78w(a)(2).

[7] 15 U.S.C. 77b.

[8] 15 U.S.C. 78c.

[9] Pub. L. No. 104–290, 106, 110 Stat. 3416 (1996).

TRID
UHCO
VRLN
WNMP

Schedule B

AAABB
AABC
AACE
AALA
AAON
AASI
AATT
ABAG
ABAN
ABAX
ABBBY
ABCO
ABCW
ABDR
ABERF
ABFI
ABOV
ABPCA
ABRI
ABRX
ABSC
ABTC
ABTE
ABTI
ABTX
ACAI
ACAM
ACAS
ACCOB
ACEC
ACEI
ACEIW
ACEL
ACEP
ACES
ACHI
ACLNF
ACLY
ACMI
ACNAF
ACRG
ACRN
ACRO
ACSEF
ACTM
ACTN
ACTU
ACVC
ACYT
ADACE
ADAM
ADAX
ADBE
ADCCW
ADDM
ADECY
ADMS
ADPT
ADRN
ADSK
ADTK
ADTN
ADVH
ADVNA
ADVS
AEGGF
AEHR
AEOS
AEPI
AERL
AERN
AERS
AESPW
AFBC
AFCO
AFCX
AFIC
AFLX
AFSC
AFTXZ
AFWY
AGAI
AGAM
AGBGC
AGCH
AGNU
AGRPA
AGRPB
AHAA
AHEPZ
AHWYW
AICX
AIFC
AIND
AINN
AIPN
AIRT
AKLM
AKSY
AKZOY
ALCO
ALDA
ALDNF
ALDV
ALFA
ALGSF
ALGX
ALHY
ALHYC
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ALLC
ALLIF
ALLP
ALLR
ALNT
ALOG
ALPH
ALRC
ALREF
ALSC
ALTIF
ALTR
ALXN
ALYD
AMAC
AMAR
AMBC
AMBI
AMCN
AMCRY
AMCT
AMCV
AMEN
AMENW
AMEP
AMEPW
AMES
AMESW
AMFM
AMLJ
AMLN
AMMB
AMPBB
AMPD
AMPDW
AMPI
AMRN
AMSC
AMSGB
AMSO
AMTA
AMTD
AMVP
AMVPW
AMWD
AMXI
AMZN
ANCO
ANDB
ANDW
ANGN
ANIK
ANLG
ANSR
ANSS
ANST
ANTC
ANTP
AORGB
APAC
APAGF
APAT
APCC
APCFY
APFC
APGR
APLX
APMC
APOG
APOL
APPB
APQCF
AQCR
ARCAF
ARGAC
ARGCD
ARIAW
ARLCF
ARMHY
ARMXF
AROW
ARSD
ARTE
ARTI
ARTNA
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ARVX
ASAI
ASAM
ASBC
ASBI
ASBP
ASDG
ASGR
ASHA
ASHEW
ASHW
ASIGF
ASII
ASIPY
ASMLF
ASND
ASNT
ASPCE
ASPT
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ASTE
ASTI
ASTM
ASTNW

ASTSF
ASTX
ASVI
ASYCF
ASYM
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ATLCW
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ATSI
ATYTF
AVCO
AVDO
AVEC
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AVTM
AWRE
AWWC
AXAS
AXLE
AXLEW
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AXSI
AXTI
AZIC
AZPN
AZUR
AZURW
BAGL
BANC
BANF
BASEA
BASI
BATS
BAYB
BBHF
BBIOY
BBTK
BBUC
BBUCU
BBUCW
BCICF
BCORY
BCRX
BCSB
BCST
BCTI
BDCO
BDJI
BDMS
BDRY
BDRYW
BEAR
BEAS
BEAV
BEBE
BEEF
BEERF
BERW
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BEXP
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BFEN
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BHQU
BHWK
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BIKR
BIMEC
BINC
BIORY
BIPRY
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BKSC
BKUNA
BKUNZ
BLCA
BLDPF
BLOCA
BLPG
BLSC
BLSI
BLUE
BMCC
BMCS
BMLS
BMTC
BNCM
BNGO
BNHN
BNHNA
BNSOF
BNSWF
BNTT
BOBE
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BOBSW
BOGN
BOGNW
BOKF
BOLD
BONT
BOOL
BOOM
BORAY
BOSA
BOSWF
BOTX
BOYL
BPAO
BPFH
BPLX
BPMI
BPOP
BRCOA
BRCP
BREL
BREW
BRGP
BRID
BRKL
BRKT
BRLI
BRTL
BRTLW
BSBN
BSET
BSNX
BSRTS
BSTC
BTEK
BTHS
BTRN
BTSR
BTUI
BTWS
BULL
BURMY
BUTI
BVAS
BVCC
BVEW
BVRSF
BVSN
BWINA
BYFC
BYND
BZET
CACC
CACS
CADA
CAFE
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CALC
CALM
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CASCW
CASH
CASL
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CBEVW
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CBLI
CBMI
CBRNA
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CBRYA
CBSH
CBSI
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CCCIW
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CCLNF
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CCPRZ
CCRD
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CCSI

CCUUY
CDEN
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CDSIU
CDWC
CDWN
CECE
CELG
CELL
CELS
CEMX
CENB
CENI
CEPH
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CERG
CEXP
CFAC
CFBC
CFFI
CFIC
CFKY
CFMT
CFON
CFSB
CFTP
CFWC
CFWY
CGCA
CGCOC
CGEN
CGGI
CGII
CGRM
CHANF
CHCO
CHDX
CHERA
CHEX
CHFC
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CHKE
CHKR
CHMD
CHMP
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CHRW
CHRX
CHRZ
CHUX
CIBN
CICI
CINS
CITC
CITI
CITZ
CKEYF
CLCDF
CLNTF
CLRP
CLTX
CLWTF
CLWY
CLZR
CLZRW
CMCO
CMCSA
CMCSK
CMGT
CMIN
CMIV
CMLS
CMMD
CMPC
CMPD
CMPL
CMPS
CMPX
CMRN
CMSS
CMST
CMSVD
CMSX
CMTI
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CMTIW
CMTL
CMVT
CMWLW
CNBA
CNBF
CNBT
CNCX
CNDO
CNDR
CNDS
CNEBF
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CNKT
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CNQR
CNRMF
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CNYF
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COHTW
COHU
COKE
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COLTY
COMMF
CONW
COOK
CORE
CORR
CORS
COSI
COST
COTTF
COVR
COYT
CPBI
CPCI
CPCL
CPDN
CPIA
CPLY
CPSS
CPTL
CPTS
CPWM
CPWR
CRAI
CRAN
CRBO
CRDN
CRDT
CREAF
CRESY
CRFT
CRGN
CRNSF
CROS
CRRB
CRRS
CRUS
CRXA
CRZO
CRZY
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CSBI
CSGI
CSLI
CSNRW
CSON
CSPI
CSPLF
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CTBP
CTCOB
CTEA
CTEC
CTEKW
CTEL
CTHR
CTIB
CTLG
CTSH
CTSI
CTWO
CTWS
CUBA
CUCO
CULS
CUNO
CVAL
CVAN
CVAS
CVTX
CVUS
CWCOF
CWST
CXIL
CXIM
CXIPY
CXSNF
CYBGE
CYCH
CYCL
CYCLD
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CYPH
CYPHZ
CYTC
CYTO
CYTR
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DAYR
DBCC
DBII
DBLEW
DBRN
DCAI
DCBK
DCRNW

DCTI
DDIM
DDRX
DECAF
DECC
DECK
DEFI
DEPO
DESI
DETC
DEVC
DFCO
DFIN
DGAS
DGIC
DGIT
DGTC
DHMS
DHULZ
DIALY
DIAN
DIEG
DIGE
DIIBF
DIMD
DINEW
DIPL
DIPLE
DISH
DISK
DISS
DIST
DIYS
DJCO
DKWD
DLPH
DLTDF
DLTK
DLTR
DLVRY
DMRK
DNAP
DNCC
DNKY
DOBQ
DOCI
DOCSF
DOCU
DOCX
DOMZ
DORL
DOSE
DOTX
DPAC
DPMI
DPRC
DPTR
DRAI
DRFNY
DRIV
DRKN
DROV
DRRA
DRTE
DSCI
DSCO
DSCOU
DSCOW
DSCP
DSCS
DSCSW
DSET
DSGR
DSGRW
DSLGF
DSPT
DSTR
DTAGY
DTII
DTPI
DTSI
DUCK
DUSA
DVID
DVIDW
DVIDZ
DWSN
DWTI
DYNT
DZTK
EASI
EBSC
EBSI
ECGOF
ECHO
ECILF
ECIN
ECLP
ECOL
ECSGY
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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 270 and 274

[Release No. IC–23786; File No. S7–31–98]

RIN 3235–AG29

Deregistration of Certain Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule and form under the Investment Company Act of 1940 that govern the deregistration of registered investment companies. The Commission also is adopting amendments that require investment companies to file the form electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. The amendments are designed to expedite the process for deregistering investment companies.

EFFECTIVE DATE: The rule amendments will become effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robin Gross Lehv, Staff Attorney, or Penelope Saltzman, Senior Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W.,

Washington, D.C. 20549–0506. For additional information, including questions about filing Form N–8F, contact the Office of Investment Company Regulation, Division of Investment Management, at (202) 942–0564, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 8f–1 [17 CFR 270.8f–1] and Form N–8F [17 CFR 274.218] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or ''Act''), and to rule 101 of the Commission's Regulation S–T [17 CFR 232.101].

I. Discussion

Under section 8(f) of the Investment Company Act, the Commission may deregister a registered investment company (''fund'') if it determines the fund is no longer an ''investment company.[1] In order to expedite the deregistration process and assist funds in preparing their applications, in 1978 the Commission adopted rule 8f–1 and Form N–8F.[2] Rule 8f–1 describes the circumstances in which funds may use Form N–8F to apply for a deregistration order, and Form N–8F specifies the information that a fund must provide.

In December 1998, the Commission proposed to revise Form N–8F to simplify the form, eliminate unnecessary items, and refocus the questions to better elicit the information we need to make the finding under section 8(f) to deregister a fund.[3] We also proposed to amend rule 8f–1 to expand the types of circumstances in which a fund may use Form N–8F to apply for a deregistration order.[4] Finally, we proposed to require that Form N–8F, like most other documents filed by funds, be submitted electronically through the Commission's EDGAR system.

The Commission received one comment letter, which supported the proposed amendments and urged their prompt adoption.[5] The commenter agreed that the amendments would facilitate completion of the form and expedite the deregistration process. We are adopting the amendments substantially as proposed, with minor technical modifications[6] in response to issues raised by the commenter.[7]

II. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. The rule and form amendments are designed to decrease the regulatory burdens for funds that apply for a deregistration order. The amendments (i) revise the content and format of Form N–8F, making it easier to understand and complete, (ii) expand the circumstances under which funds may use the form to apply to deregister, and (iii) require the form to be filed electronically.

As explained in greater detail in the cost-benefit analysis of the Proposing Release, the Commission believes these changes will result in cost and time savings for registered investment companies. Specifically, we estimated that the amendments will reduce the average time that it takes to complete the form by about 50 percent, and will similarly reduce the number of applications that require the applicant to provide additional or clarifying information.[8] The one comment letter we received agreed that the proposed amendments would expedite the registration process, but did not provide specific estimates of any costs or benefits of the amendments.

III. Paperwork Reduction Act

Certain provisions of the amendments to rule 8f–1 and Form N–8F constitute a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. The Commission solicited, but did not receive, comments on the collection of information requirements in the Proposing Release. The Commission submitted the proposed amendments to the Office of Management and Budget (''OMB'') pursuant to 44 U.S.C. 3507(d) and received approval of the amendments'' collection of information requirements (OMB control number 3235–0157).[9] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information is not mandatory but is recommended for all funds that seek to deregister under the circumstances described in rule 8f–1. The amended rule does not require that the collection of information be made public or kept confidential by the parties.

IV. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') concerning rule 8f–1 and Form N–8F has been prepared in accordance with 5 U.S.C. 604. An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with 5 U.S.C. 603, and a summary of the IRFA was included in the Proposing Release. The Commission received no comments on the IRFA.

The FRFA notes that the amendments are intended to improve the quality of information provided on the form and to reduce the time and effort required to complete the form. The amendments do not impose new burdens on respondents other than the requirement that the form be filed through the EDGAR system. The amendments will not impose any new reporting or recordkeeping requirements.

As discussed more fully in the FRFA, the amendments will affect small

[1] 15 U.S.C. 80a–8(f).

[2] *See* Deregistration of Certain Investment Companies and Quarterly Reports of Management Investment Companies, Investment Company Act Release No. 10237 (May 11, 1978) [43 FR 21664 (May 19, 1978)].

[3] *See* Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23588 (Dec. 4, 1998) [63 FR 69236 (Dec. 16, 1998)] (''Proposing Release'').

[4] Under the proposed amendments, a fund could use the form if it (i) has sold substantially all of its assets to another fund or merged into or consolidated with another fund, (ii) has distributed substantially all of its assets to its shareholders and completed, or is in the process of, winding up its affairs, (iii) qualifies for an exclusion from the definition of investment company under section 3(c)(1) or section 3(c)(7) of the Act, or (iv) has decided to become a business development company.

[5] *See* Letter from Investment Company Institute (Feb. 5, 1999) (placed in File No. S7–31–98).

[6] Among other technical changes, we deleted the question requesting the date that the fund filed a notice of registration, because that information is not necessary to our determination under section 8(f) if the fund provides its registration number, as requested by the form. *See* Proposed Form N–8F, item 10; Amended Form N–8F, item 3.

[7] Form N–8F contains a reminder, but not a requirement, that a deregistering fund must file a final Form N–SAR [17 CFR 274.101] in accordance with other rules under the Act. *See* Amended Form N–8F, instruction 6. The commenter suggested that the Commission eliminate the obligation to file a final Form N–SAR in certain circumstances. We are considering amendments to Form N–SAR, and will consider the commenter's suggestion in the context of that rulemaking.

[8] The Commission believes the form typically is completed by support staff. Based on an estimated cost of $15 per hour for a clerical worker to complete Form N–8F and an estimate of 130 applications filed each year, the Commission estimates the current total annual cost of filing the form is $11,700 (130 × $15 x 6 hrs.), while the total annual cost of filing the amended form would be $5,850 (130 × $15 × 3 hrs.).

[9] As stated in the Proposing Release, the Commission estimates that the amendments will reduce the reporting and recordkeeping burden of the rule and form to 3 hours per respondent. Based on past experience, we estimate that each year approximately 130 funds will apply to deregister, and that each applicant will apply only once. Therefore, we estimate that the annual reporting and recordkeeping burden for the amended form will be 3 hours per applicant, and 390 hours total for all applicants.

businesses or small organizations (collectively, ''small entities''), as defined by the Commission's rules, in the same manner as all other entities who use Form N–8F to deregister. The Commission believes the amendments will decrease burdens on all funds by facilitating and expediting the deregistration process, saving them time and money.

The FRFA states that for purposes of the Investment Company Act and the Regulatory Flexibility Act, a small entity is a fund that, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[10] Of approximately 3900 active funds (including business development companies), 339 funds are small entities. Any of these 339 funds that applies to deregister under circumstances described in amended rule 8f–1 could use Form N–8F.

Finally, the FRFA notes that the Commission considered various alternatives that might minimize the economic impact of the amendments on small entities. These include: (i) The establishment of differing compliance requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. The FRFA concludes that alternative requirements or simplification or consolidation of the requirements is unnecessary because the amendments are designed to reduce the compliance burdens for all funds, including small entities. In addition, an exemption from any of the requirements for small entities would increase their regulatory burden rather than decrease it.

A copy of the FRFA may be obtained by contacting Robin Gross Lehv, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

V. Statutory Authority

The Commission is amending rule 8f–1 and Form N–8F pursuant to the authority set forth in section 38(a) [15 U.S.C. 80a–37(a)] of the Investment Company Act.

[10] Rule 0–10 under the Investment Company Act [17 CFR 270.0–10].

List of Subjects

17 CFR Part 232

Reporting and recordkeeping requirements.

17 CFR Part 270

Investment companies, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements.

Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80–30 and 80a–37.

§ 232.101 [Amended]

2. Section 232.101 is amended in paragraph (a)(1)(iv) by removing the phrase '', 8(f)'' and by removing the phrase '', 80a–8(f)''.

3. Section 232.101 is amended in paragraph (c)(11) by removing the phrase ''8(f),'' and by removing the phrase ''80a–8(f),''.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

4. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

5. Section 270.8f–1 is revised to read as follows:

§ 270.8f–1 Deregistration of certain registered investment companies.

A registered investment company that seeks a Commission order declaring that it is no longer an investment company may file an application with the Commission on Form N–8F (17 CFR 274.218) if the investment company:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of ''investment company'' under section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Act; or

(d) Has become a business development company.

Note to § 270.8f–1: Applicants who are not eligible to use Form N–8F to file an application to deregister may follow the general guidance for filing applications under rule 0–2 (17 CFR 270.0–2) of this chapter.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

7. Section 274.218 and Form N–8F are revised to read as follows:

§ 274.218 Form N–8F, application for deregistration of certain registered investment companies.

This form must be used as the application for an order of the Commission in cases in which the applicant is a registered investment company that:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of ''investment company'' under section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Act; or

(d) Has become a business development company.

Note: Form N–8F does not, and the amendments will not, appear in the Code of Federal Regulations. A copy of Form N–8F is attached as an Appendix to this document.

Dated: April 15, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

BILLING CODE 5010–01–P

OMB APPROVAL
OMB Number: 3235-0157
Expires: March 31, 2002
Estimated average burden hours per response.....3

APPENDIX

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form N-8F

Application for Deregistration of Certain Registered Investment Companies.

Instructions for using Form N- 8F

This form may be filed by an investment company ("fund") that is currently registered with the Securities and Exchange Commission under the Investment Company Act of 1940 ("Act"), is seeking to deregister, and is in one of the four categories in Instruction 1 below.

1. To use this form, the fund must be seeking to deregister under one of the following circumstances identified in rule 8f-1 [17 CFR 270.8f-1]:

   (a) The fund has (i) sold substantially all of its assets to another registered fund or (ii) merged into or consolidated with another registered fund (**"Merger"**);

   (b) The fund has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs (**"Liquidation"**);

   (c) The fund qualifies for an exclusion from the definition of "investment company" under section 3(c)(1) or section 3(c)(7) of the Act (**"Abandonment of Registration"**); or

   (d) The fund has become a business development company (**"Business Development Company"**).

2. If the fund is not eligible to use this form, refer to rule 0-2 under the Act [17 CFR 270.0-2] for general instructions on filing an application with the Commission. Applications for deregistration pursuant to rule 0-2 must be submitted electronically in accordance with rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] and the EDGAR Filer Manual.

3. This form and all exhibits must be submitted electronically to the Commission in accordance with rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] and the EDGAR Filer Manual.

4. Amendments to this form also must be filed electronically (see Instruction 3 above), and must include a verification identical to the one that appears at the end of this form.

5. No fee is required to submit this form or any amendments.

6. Funds are reminded of the requirement to timely file a final Form N-SAR with the Commission. See rule 30b1-1 under the Act [17 CFR 270.30b1-1]; Form N-SAR [17 CFR 274.101].

SEC's Collection of Information

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. A fund that wishes to deregister and is in one of the four categories in Instruction 1 may use this form. The principal purpose of this collection of information is to enable the Commission to determine that a registered investment company has ceased to be an investment company as defined by the Act or is a business development company. The Commission estimates that the burden for completing this form will be approximately 3 hours per filing. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. Responses to this collection of information will not be kept confidential.

TEXT OF THE FORM BEGINS ON THE NEXT PAGE

I. General Identifying Information

1. Reason fund is applying to deregister (check only one; for descriptions, see Instruction 1 above):

   [ ] **Merger**

   [ ] **Liquidation**

   [ ] **Abandonment of Registration**
   (Note: Abandonments of Registration answer only questions 1 through 15, 24 and 25 of this form and complete verification at the end of the form.)

   [ ] Election of status as a **Business Development Company**
   (Note: Business Development Companies answer only questions 1 through 10 of this form and complete verification at the end of the form.)

2. Name of fund:

3. Securities and Exchange Commission File No.: 811-_____

4. Is this an initial Form N-8F or an amendment to a previously filed Form N-8F?

   [ ] Initial Application [ ] Amendment

5. Address of Principal Executive Office (include No. & Street, City, State, Zip Code):

6. Name, address and telephone number of individual the Commission staff should contact with any questions regarding this form:

7. Name, address and telephone number of individual or entity responsible for maintenance and preservation of fund records in accordance with rules 31a-1 and 31a-2 under the Act [17 CFR 270.31a-1, .31a-2]:

   NOTE: Once deregistered, a fund is still required to maintain and preserve the records described in rules 31a-1 and 31a-2 for the periods specified in those rules.

8. Classification of fund (check only one):

   [ ] Management company;

   [ ] Unit investment trust; or

   [ ] Face-amount certificate company.

9. Subclassification if the fund is a management company (check only one):

[ ] Open-end [ ] Closed-end

10. State law under which the fund was organized or formed (e.g., Delaware, Massachusetts):

11. Provide the name and address of each investment adviser of the fund (including sub-advisers) during the last five years, even if the fund's contracts with those advisers have been terminated:

12. Provide the name and address of each principal underwriter of the fund during the last five years, even if the fund's contracts with those underwriters have been terminated:

13. If the fund is a unit investment trust ("UIT") provide:

(a) Depositor's name(s) and address(es):

(b) Trustee's name(s) and address(es):

14. Is there a UIT registered under the Act that served as a vehicle for investment in the fund (e.g., an insurance company separate account)?

[ ] Yes [ ] No

If Yes, for each UIT state:
Name(s):

File No.: 811-_____

Business Address:

15. (a) Did the fund obtain approval from the board of directors concerning the decision to engage in a Merger, Liquidation or Abandonment of Registration?

[ ] Yes [ ] No

If Yes, state the date on which the board vote took place:

If No, explain:

(b) Did the fund obtain approval from the shareholders concerning the decision to engage in a Merger, Liquidation or Abandonment of Registration?

[ ] Yes [ ] No

If Yes, state the date on which the shareholder vote took place:

If No, explain:

II. Distributions to Shareholders

16. Has the fund distributed any assets to its shareholders in connection with the Merger or Liquidation?

[ ] Yes [ ] No

(a) If Yes, list the date(s) on which the fund made those distributions:

(b) Were the distributions made on the basis of net assets?

[ ] Yes [ ] No

(c) Were the distributions made pro rata based on share ownership?

[ ] Yes [ ] No

(d) If No to (b) or (c) above, describe the method of distributions to shareholders. For Mergers, provide the exchange ratio(s) used and explain how it was calculated:

(e) Liquidations only:
Were any distributions to shareholders made in kind?

[ ] Yes [ ] No

If Yes, indicate the percentage of fund shares owned by affiliates, or any other affiliation of shareholders:

17. Closed-end funds only:
Has the fund issued senior securities?

[ ] Yes [ ] No

If Yes, describe the method of calculating payments to senior securityholders and distributions to other shareholders:

18. Has the fund distributed **all** of its assets to the fund's shareholders?

[ ] Yes [ ] No

If No,

(a) How many shareholders does the fund have as of the date this form is filed?

(b) Describe the relationship of each remaining shareholder to the fund:

19. Are there any shareholders who have not yet received distributions in complete liquidation of their interests?

[ ] Yes [ ] No

If Yes, describe briefly the plans (if any) for distributing to, or preserving the interests of, those shareholders:

III. Assets and Liabilities

20. Does the fund have any assets as of the date this form is filed? (See question 18 above)

[ ] Yes [ ] No

If Yes,

(a) Describe the type and amount of each asset retained by the fund as of the date this form is filed:

(b) Why has the fund retained the remaining assets?

(c) Will the remaining assets be invested in securities?

[ ] Yes [ ] No

21. Does the fund have any outstanding debts (other than face-amount certificates if the fund is a face-amount certificate company) or any other liabilities?

[ ] Yes [ ] No

If Yes,

(a) Describe the type and amount of each debt or other liability:

(b) How does the fund intend to pay these outstanding debts or other liabilities?

IV. Information About Event(s) Leading to Request For Deregistration

22. (a) List the expenses incurred in connection with the Merger or Liquidation:

    (i) Legal expenses:

    (ii) Accounting expenses:

    (iii) Other expenses (list and identify separately):

    (iv) Total expenses (sum of lines (i)-(iii) above):

    (b) How were those expenses allocated?

    (c) Who paid those expenses?

    (d) How did the fund pay for unamortized expenses (if any)?

23. Has the fund previously filed an application for an order of the Commission regarding the Merger or Liquidation?

    [ ] Yes [ ] No

    If Yes, cite the release numbers of the Commission's notice and order or, if no notice or order has been issued, the file number and date the application was filed:

V. Conclusion of Fund Business

24. Is the fund a party to any litigation or administrative proceeding?

    [ ] Yes [ ] No

    If Yes, describe the nature of any litigation or proceeding and the position taken by the fund in that litigation:

25. Is the fund now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs?

    [ ] Yes [ ] No

    If Yes, describe the nature and extent of those activities:

VI. Mergers Only

26. (a) State the name of the fund surviving the Merger:

(b) State the Investment Company Act file number of the fund surviving the Merger: 811-_____

(c) If the merger or reorganization agreement has been filed with the Commission, state the file number(s), form type used and date the agreement was filed:

(d) If the merger or reorganization agreement has **not** been filed with the Commission, provide a copy of the agreement as an exhibit to this form.

VERIFICATION

The undersigned states that (i) he or she has executed this Form N-8F application for an order under section 8(f) of the Investment Company Act of 1940 on behalf of _____, (Name of Fund) (ii) he or she is the _____ (Title) of _____ (Name of Fund), and (iii) all actions by shareholders, directors, and any other body necessary to authorize the undersigned to execute and file this Form N-8F application have been taken. The undersigned also states that the facts set forth in this Form N-8F application are true to the best of his or her knowledge, information and belief.

(Signature)

_____

[FR Doc. 99–9942 Filed 4–20–99; 8:45 am]
BILLING CODE 8010–01–C

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC66

Kaloko-Honokohau National Historical Park, Hawaii; Public Nudity

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is issuing this final rule to prohibit public nudity within the boundaries of Kaloko-Honokohau National Historical Park, Hawaii. Public nudity is in conflict with the enabling legislation of the park and the traditional values of native Hawaiian culture, which the park was created to perpetuate and preserve.

EFFECTIVE DATE: This rule becomes effective on May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Bryan Harry, Superintendent, National Park Service, Pacific Islands Support Office, 300 Ala Moana Blvd., Suite 6–226, P.O. Box 50165, Honolulu, Hawaii 96850. Telephone 808–541–2693.

SUPPLEMENTARY INFORMATION:

Background

Public Law 95–625 (16 U.S.C. 396d) established Kaloko-Honokohau National Historical Park on November 10, 1978 ''to provide a center for the preservation, interpretation and perpetuation of traditional native Hawaiian activities and culture, and to demonstrate historic land use patterns as well as to provide needed resources for the education, enjoyment and appreciation of such traditional native Hawaiian activities and culture by local residents and visitors * * *'' Public nudity, an activity that can be construed as contemptuous and insulting in traditional native Hawaiian culture, is in conflict with the above stated purpose for which this park was established. Continued use of the park in this manner derogates resources that are used traditionally and creates a condition that is in conflict with related traditional native Hawaiian practices.

In traditional Hawaiian culture, public nudity had strong social connotations. The following excerpts, pertaining to nudity, document the traditional viewpoint of Hawaiians. Nudity and public display of genitals was very strictly regulated within a defined traditional social context.

Mourning: * * * displaying genitals was neither common nor approved, Mrs. Pukui explains. Such actions were excusable only because the mourner was considered pupule (crazy) from grief. (Kamakau 1919–20:2–45; Campbell 1967:101; Pukui, Haertig, and Lee, 1972 Vol. I: 124,133; 1972 Vol. II:183; Valeri 1985:261, 308).

Sorcery: As nudity is excused during mourning, nudity in the ceremony of anewanewa, was excused due to fear of sorcery. These two circumstances were probably the only time Hawaiians of both sexes were ever nude in public. Exposure of the genitals was not approved. (Pukui, Haertig, and Lee, 1972:124).

Nudity, general: Hawaiian tradition, for those following the kapu exposing the buttocks (hoopohopoho) was a gesture of complete contempt * * * and a grave insult to the beholder and for this reason even the slit-in-the-back hospital gown thus becomes a threat to ordinary courtesy. (Pukui, Haertig, and Lee, 1972:91).

Today, the reaction of Hawaiian cultural experts to public nudity echoes the past pre-missionary view towards nakedness (personal communication with Pat Bacon, who is Mary Kawena Pukui's daughter). Specifically, she was asked as to what circumstances in the Hawaiian culture would nudity be acceptable. Ms. Bacon stated that traditionally, children were allowed to go naked until they were about 10 years old, and that adult, female or male, nudity was not acceptable, and that men were nude only for rituals.

The park initially attempted to encourage voluntary compliance to prohibit public nudity. When this failed, the park enacted a temporary restriction of public nudity through the Superintendent's Compendium (36 CFR 1.5(a)(2)). This temporary prohibition is currently in place.

A proposed rule was published in the **Federal Register** April 20, 1998 (63 FR 19436). The public comment period for the proposed rule was open for 60 days.

Summary of Comments

We received a total of 1,355 letters and five petitions with comments on the proposed rule during the public comment period ending June 19, 1998. We have carefully considered all comments received. The legitimate concerns of both Hawaiian residents and of individuals from areas outside Hawaii were given consideration in the review process. In addition, we completed a critical review of the content and format of the final regulation. A summary of comments and our response to these comments follows.

A total of 468 letters opposed the proposed rule to ban public nudity at Kaloko-Honokohau. Of the 468 letters opposing the proposed rule, 47 were from the State of Hawaii and 375 were from out-of-state. Twenty-eight of the 47 Hawaii addresses were from the island of Hawaii where this national historical park is located. The addresses of origin of 46 of the letters opposing the rule could not be determined.

A total of 887 letters and the five petitions, containing a total of 74 signatures, were in support of the proposed rule and against public nudity at Kaloko-Honokohau. Of the 887 letters supporting the rule, 849 had addresses from the State of Hawaii and eight had out-of-state addresses. A total of 815 of the 887 Hawaii addresses were from the island of Hawaii where this national historical park is located. The addresses of origin of 30 letters could not be determined.

More than three hundred letters of comment opposing the rule appeared to come from members of the Naturist Society and the American Association for Nude Recreation (AANR). These letters contained statements similar to those found in advisory alerts forwarded to members by the Naturist Action Committee and contained in the AANR's monthly publication, *The Bulletin*. Members were asked to submit individual letters and were provided with the following suggested points to make in those letters:

1. State that you are a federal taxpayer objecting to the proposed rule against Nudity at Honokohau National Park.

2. You can also mention: That, as a federal taxpayer, you believe national parks are for everyone; that, with the right planning, nude recreation and other uses such as educational tours of the historic park can be accommodated; and that the availability of nude beaches is a factor in your decision-making about where you and your family choose to spend vacation dollars.

A total of 317 letters opposing the proposed rule contained references to the above points.

A total of 173 of the letters opposing the proposed rule disputed or disagreed that public nudity could be construed as contemptuous and insulting in traditional native Hawaiian culture and in conflict with the stated purpose of the Kaloko-Honokohau National Historical Park. These letters contained statements that native Hawaiians swam nude at Honokohau beach for centuries and that nude use was not in conflict with traditional practices by native Hawaiians, and that nude use of Honokohau beach is not offensive to native Hawaiians.

Letters were received from members of Hawaii's Congressional Delegation, a member of the State Legislature, the

Office of Hawaiian Affairs, the Kaloko-Honokohau Advisory Commission, the Naturist Society, the Naturist Action Committee, the American Association of Nude Recreation, the Western Sunbathing Association, and organizations and foundations representing Native Hawaiians. The content of these letters is summarized below.

Hawaii Senator Daniel K. Inouye stated he was pleased to learn that a proposed rule had appeared in the April 20, 1998 **Federal Register** to prohibit nude sunbathing at Kaloko-Honokohau National Historical Park. Senator Inouye requested that the proposed rule be approved and ratified. The letter closed with the following: ''I am convinced that this rule is essential to the proper management of the national park, and as a means of demonstrating federal sensitivity to native Hawaiian cultural practices and historic sites.''

Hawaii Senator Daniel Akaka expressed full support for the proposed rule to prohibit public nudity within the boundaries of Kaloko-Honokohau National Historical Park. The senator added that ''[p]ublic nudity was never intended to be permitted on park premises when Congress considered the establishment of the park.''

U.S. Congresswoman Patsy T. Mink, within whose district the national historical park is located, wrote, ''to urge the adoption of the proposed rule to prohibit nude sunbathing at Kaloko-Honokohau National Historical Park.'' Congresswoman Mink further stated that as the sponsor of legislation to establish Kaloko-Honokohau as a national park, ''it was not my intention nor the intention of Congress to allow public nudity at this significant Native Hawaiian site.''

State of Hawaii Representative Paul Whalen, whose legislative district contains Kaloko-Honokohau, supported including the proposed rule in the Code of Federal Regulations. Representative Whalen's letter stated ''[g]iven the stated purpose of the park and the native Hawaiian view of public nudity, nude sunbathing at the park site is both inappropriate for such a learning center and culturally insensitive.''

The Hawaii Island Trustee of the Office of Hawaiian Affairs supported the proposed regulation prohibiting public nudity at Kaloko-Honokohau National Historical Park. The Trustee stated that public nudity runs counter to the purpose of the park which is for reorientation to things Hawaiian. The Office of Hawaiian Affairs was established by the Hawaii Legislature as a self-governing, corporate body whose purpose is the betterment of conditions for all Hawaiians.

A letter was received from the Chairman of the Na Hoa Pili O Kaloko-Honokohau, the Advisory Commission established by Congress to advise NPS ''with respect to the historical, archeological, cultural, and interpretive programs of the park.'' The letter stated that at the Commission's December 13, 1997 meeting the members present voted unanimously in favor of an amended motion to ban all nudity in the park. The letter further stated that at their March 28, 1998 meeting, the Commission reiterated its position that nudity at the park be prohibited.

The Founder and President of the Naturist Society (TNS) requested that the proposed rule be discarded and in its place a Special Regulation be formulated to provide for the management of nude recreation at Honokohau Beach. TNS has been actively engaged for nearly two decades in promoting nude recreation on appropriate public lands.

The American Association of Nude Recreation (AANR), on behalf of its more than 50,000 members wrote to request that the proposed rule be delayed and ultimately rescinded. The AANR based its request on pending cases related to the current ban on nudity at Kaloko-Honokohau and their awareness of a forthcoming lawsuit challenging both the current ban and the proposed rule. Further, AANR's letter presented the view that informational signs could be posted in the park to manage conflicting uses.

The Naturist Action Committee (NAC), affiliated with the Naturist Society, expressed opposition to the proposal to prohibit public nudity at Honokohau Beach. The letter asked that the proposed rule be abandoned and a Special Regulation be established to express a more positive attitude toward nude recreation at Kaloko-Honokohau. NAC's stated objectives focus on perpetuating nude recreational activities that have existed on federal and state-managed recreational lands for many generations.

A letter was received from Ms. Mililani Trask on behalf of Ka Lahui Hawaii, a native Hawaiian organization claiming membership of 23,000 individuals of Hawaiian heritage. The letter, in part, states:

> Nudity in our Hawaiian culture *was not* and *is not* culturally appropriate. In our culture, public nudity was considered insulting and contemptuous and where it occurred in relation to sacred sites (wahi pana), it was considered an act of desecration. The only exceptions to this rule are religious ritual and mourning. These exceptions do not apply to Pu'uoina Heiau [a sacred Hawaiian temple near Honokohau beach]. Our cultural practices regarding nudity have been well documented by Ms. Mary Kawena Pukui, a renowned and often cited cultural expert.

The Edith Kanaka'ole Foundation, a private non-profit organization established to uphold and practice the indigenous Hawaiian culture, opposed naked sunbathing in the National Park of Kaloko-Honokohau. The letter states why nudity in general and naked sunbathing in particular was not and is not a traditional Hawaiian cultural practice.

The President of the Western Sunbathing Association, an affiliate of AANR, wrote to oppose the proposed ban on nudity at Honokohau Beach. The letter stated that until the enactment of the temporary ban on nudity effective January 1, 1997, nudists had peacefully coexisted with other beach users for many years. The association has over 8,000 members and is affiliated with the Kona Sun Club.

The chairperson of Na Kokua Kaloko-Honokohau, a non-profit organization established to assist NPS at Kaloko-Honokohau, wrote in opposition to nude sunbathing in Kaloko-Honokohau National Historical Park and in support of the proposed rule.

A letter and a petition containing 25 signatures were received from the Waimea Hawaiian Civic Club. These civic organizations were formed throughout the State of Hawaii to promote the interests of native Hawaiians. The purpose of the Waimea Hawaiian Civic Club's letter was to inform NPS of their stand banning nudity in public places in Hawaii, particularly at Kaloko-Honokohau.

None of the letters of comment supporting the proposed rule included suggestions or recommendations for any modification in content or format. Therefore, we have not prepared responses to comment letters supporting the proposed rule.

The following are responses to statements and suggestions made in several hundred comment letters opposing the proposed rule:

Comment: With the right planning, nude recreation can be accommodated at the park.

Response: The practice of nude sunbathing at Kaloko-Honokohau is a recreational activity that has been the cause of many complaints over the past decade from visitors and is therefore considered to be disruptive to orderly management of the park. Restricting this activity to certain locations within the park and/or to certain times has been eliminated as a management option because Honokohau beach is a small area and cultural practices take place throughout the park at different times. More important, nude sunbathing is a recreational activity that is in conflict with the purpose for which this national historical park was established. Therefore, anything less than a prohibition of public nudity at Kaloko-Honokohau is judged to be not feasible.

Comment: Public nudity is consistent with native Hawaiian culture and the stated purpose of the park and is not offensive to the native Hawaiians.

Response: The published cultural and historical record and the views of contemporary cultural experts, including native Hawaiians, do not support this view. Historically, in Hawaii, nudity has a wide range of strong social connotations from submission to spiritual ties to the aina, or earth. When done without purpose,

the exposure of the buttocks and anal area could be construed as a supreme gesture of contempt. Displaying genitals was neither common nor approved. Such actions were excusable during mourning only because the mourner was considered pupule (crazy) from grief. In general, adult nudity, outside of the family and without a reason for it, was disapproved. Today, the reaction of contemporary cultural experts to public nudity is consistent with the Hawaiian pre-missionary view of nakedness.

The stated purpose of the park is to ''provide a center for the preservation, interpretation, and perpetuation of the traditional native Hawaiian activities and culture* * *'' Public nudity, an activity that can be construed as contemptuous and insulting to traditional native Hawaiian culture, is in direct conflict with the above stated purpose.

Letters of comment received from contemporary native Hawaiian individuals and organizations consistently maintain that they regard public nudity is regarded by them to be offensive.

Comment: Rescind the proposed rule because of the pending criminal case involving the nudity prohibition in the superintendent's compendium. Because the case raises several Constitutional issues, its outcome could well conflict with the proposed rule.

Response: The defendants in that case withdrew their constitutional challenge to the compendium closure. Therefore, the ruling on this case will not conflict with this rulemaking.

Comment: The proposed rule should be rescinded because the AANR is aware of a civil lawsuit about to be filed in federal court, which poses similar concerns.

Response: The possibility of future lawsuits is not a sufficient basis for NPS to rescind this rulemaking.

Comment: A preferable way to prevent conflict among users of Honokohau is with informational signs providing notice of areas where clothes-free swimming and sunbathing occur.

Response: Informational signs would not prevent the conflicts between users engaged in public nudity and the traditional Hawaiian cultural purposes for which the park was established.

Comment: Formulate a new Special Regulation that provides FOR the management of nude recreation.

Response: Such a rule would be inconsistent with the park's enabling legislation and would derogate the values and purposes for which the park was established. The purpose of the proposed rule is to create an ambience and setting that fosters rather than inhibits the preservation and perpetuation of the traditional Hawaiian culture.

Comment: Until the enactment of the temporary ban on nudity effective January 1, 1997, nudists had peacefully coexisted with other beach users for many years.

Response: Since acquiring the property on which nude sunbathing is occurring, NPS has regularly received complaints from visitors—cultural education groups, the native Hawaiian community, school groups, and segments of the general public—regarding the presence of nude sunbathers in the park. Park rangers, in a lengthy series of case incident reports, document all these complaints. Some visitors stated they would choose to stay away rather than to visit the park where this kind of recreational activity was taking place.

Comment: Nude recreation is a legal activity on federal property, a point well established by NPS's own Special Directive 91–3 (Information on Public Nudity) dated May 29, 1991.

Response: This Special Directive, which Kaloko-Honokohau has followed, provides the following information on NPS policy regarding recreational activities:

> The National Park Service will encourage recreational activities that are consistent with applicable legislation, and that are compatible with other visitor uses.
>
> Unless the activity is mandated by statute, the National Park Service will not allow a recreational activity in a park or in certain locations within a park if it would involve or result in * * * unacceptable impacts on visitor enjoyment due to interference with or conflict with other visitor use activities, among other things.
>
> When unacceptable visitor conflicts occur, as a result of public nudity, a resolution of the situation should be attempted informally, if appropriate, with the persons who are the subjects of the complaint. If informal attempts fail to resolve the conflict and enforcement action becomes necessary, the option may exist of either applying NPS regulations, or State or local laws that specifically prohibit public nudity. The latter method has the advantage of providing consistency in enforcement on both Federal lands and adjacent areas.
>
> Park areas experiencing a particularly difficult situation that cannot be solved by the above methods may wish to propose park specific rulemaking that will address these problems.

Notwithstanding that nude sunbathing is inconsistent with the park's enabling legislation and that the park received many complaints from visitors about this recreational activity, the NPS, over a period of several years, attempted to resolve the situation informally with the persons who were the subjects of the complaint. In addition, attempts were made to apply State or county laws that prohibit public nudity. None of these attempts succeeded in resolving the situation and the Superintendent subsequently chose to propose park specific rulemaking to address this problem.

Comment: Naturist individuals and organizations in Hawaii were unable to gain a place at the table in the discussion of management options at Kaloko-Honokohau National Historical Park.

Response: The proponents of recreational nudity, including naturists, stated their views in substantial numbers at the public scoping meetings held in 1991 on the proposed general management plan. At these meetings and during the open public comment period that followed, the NPS was asked to designate Honokohau beach as clothing optional. In 1992, during the public meetings on the draft general management plan and during the open public comment period that followed, proponents of public nudity at Honokohau beach again asked that Honokohau beach be designated clothing optional. The NPS carefully weighed the feasibility of these requests against the park's enabling legislation and other public comments received during the development of the general management plan. Approved in 1994, the plan, while recognizing the use of Honokohau beach by nude sunbathers, states that this use will be prohibited in the future as the park is developed. Moreover, during the 60-day comment period on the proposed rule, naturists were able to express their views regarding recreational nudity at Kaloko-Honokohau. Over the past several years, there have been many opportunities for naturists to discuss the future of recreational nudity at Kaloko-Honokohau with the NPS.

After careful review and analysis of the comments received during the public review period, NPS finds that the proposed rule is in accord with the congressionally established purpose of this national historical park. Specifically, the NPS judges the proposed rule to be consistent with Section 505(a) of Public Law 95–625 which states the purpose of Kaloko-Honokohau National Historical Park to be ''the preservation, interpretation, and perpetuation of traditional native Hawaiian activities and culture.* * *'' Further, the NPS finds the proposed rule to be consistent with what past and contemporary cultural experts inform the Park Superintendent is Hawaiian tradition. Finally, the letters of comment contained no information that would

cause the NPS to modify either the content or format of the proposed rule.

Drafting information. The principal authors of this final rule are James Martin, Superintendent, Hawaii Volcanoes National Park; Bryan Harry, Superintendent, National Park Service, Pacific Islands Support Office; Laura Carter-Schuster, Resource Manager, Kaloko-Honokohau National Historical Park; Dennis Burnett and Chip Davis, Washington Office of Ranger Activities, National Park Service.

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule is local in nature and only impacts visitors to the Kaloko-Honokohau National Historical Park. Visitor conflicts will be reduced, enhancing the enjoyment of the area for the vast majority of visitors, who were previously offended by public nudity.

This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule will not adversely impact public visitation or perpetuation and observance of traditional Native Hawaiian cultural practices for which the park was established.

This rule does raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document 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 economic effects of this rulemaking are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Does not represent a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. State Representatives and organizations expressed support for the rule.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and submissions under the Paperwork Reduction Act or OMB form 83–I are not required. The visitor use management aspect of this rule does not require information collection.

National Environmental Policy Act

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based upon this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this regulation. However, a Final EIS and Record of Decision were issued in 1994 along with the General Management Plan for the management and development of Kaloko-Honokohau National Historical Park under the provisions of NEPA.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. New § 7.87 is added to read as follows:

§ 7.87 Kaloko-Honokohau National Historical Park.

(a) *Is public nudity prohibited at Kaloko-Honokohau National Historical Park?* Yes. Public nudity, including nude bathing, by any person on Federal land or water within the boundaries of Kaloko-Honokohau National Historical Park is prohibited. This section does not apply to a person under 10 years of age.

(b) *What is public nudity?* Public nudity is a person's failure, when in a public place, to cover with a fully opaque covering that person's genitals, pubic areas, rectal area or female breast below a point immediately above the top of the areola.

(c) *What is a public place?* A public place is any area of Federal land or water subject to Federal jurisdiction within the boundaries of Kaloko-Honokohau National Historical Park, except the enclosed portions of restrooms or other structures designed for privacy or similar purposes.

Dated: April 7, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–9958 Filed 4–20–99; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300832; FRL–6073–1]

RIN 2070–AB78

Fludioxonil; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fludioxonil in or on strawberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries. This regulation establishes a maximum permissible level for residues of fludioxonil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on May 31, 2000.

DATES: This regulation is effective April 21, 1999. Objections and requests for hearings must be received by EPA on or before June 21, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300832], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300832], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300832]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerance for residues of the fungicide fludioxonil, in or on strawberries at 2.0 part per million (ppm). This tolerance will expire and is revoked on May 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

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

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

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

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fludioxonil on Strawberries and FFDCA Tolerances

According to the Applicant, gray mold caused by *Botrytis cinerea* is one of the most severe problems limiting strawberry production in Florida. Gray mold affects both flowers and fruit, resulting in marketable yield losses. Historically, gray mold has been controlled with bloom sprays of Rovral (iprodione) then weekly applications of captan until harvest. This schedule has provided good control of gray mold, especially for relatively resistant varieties, such as Oso Grande.

However, a shift toward the usage of certain varieties of strawberries which have specific desirable attributes (i.e.,

production, pest resistance or tolerance, etc.) but are more susceptible to gray mold, the development of gray mold strains with resistance to iprodione, and limitation of iprodione use on strawberries recently instituted as part of the iprodione reregistration has resulted in a situation where growers expect heavy losses without the requested product, Switch (which contains the active ingredients cyprodinil and fludioxonil). EPA has authorized under FIFRA section 18 the use of fludioxonil on strawberries for control of gray mold in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fludioxonil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied at a time and in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fludioxonil meets EPA's registration requirements for use on strawberries or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fludioxonil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fludioxonil, contact the Agency's Registration Division at the address provided under the ''ADDRESSES'' section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fludioxonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fludioxonil on strawberries at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fludioxonil are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. No endpoint was identified for acute dietary exposure. The Agency has concluded that the toxicology database does not suggest the need for this assessment.

2. *Short- and intermediate-term toxicity*. No toxicological endpoints of concern were identified for acute oral exposure, short-term dermal exposure or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for fludioxonil at 0.03 milligrams/kilogram/day (mg/kg/day). This RfD is based on a no observed adverse effects level (NOAEL) of 3.3 mg/kg/day, taken from a chronic feeding study in dogs, and an uncertainty factor of 100. The effect observed at the lowest effect level (LEL) of 35.5 mg/kg/day was decreased body weight gain in females.

4. *Carcinogenicity*. Fludioxonil has been classified as a Group D- not classifiable as to human carcinogenicity-chemical by the Cancer Peer Review Committee. The Group D classification was based on the statistically significant increase in liver tumors in female rats for combined adenoma/carcinoma only, the lack of a tumorigenic response in male rats or in either sex of the mouse, and the need for additional mutagenicity studies.

C. Exposures and Risks

1. *From food and feed uses*. A tolerance has been established (40 CFR 180.516) for the residues of fludioxonil, in or on potatoes at 0.02 ppm. Fludioxonil is currently registered for use as a seed treatment on potatoes, popcorn, field and sweet corn, and sorghum, as well as for use in greenhouses on nonfood crops. Additionally, time-limited tolerances have been established for residues of fludioxonil on apricots, nectarines, peaches and plums. Risk assessments were conducted by EPA to assess dietary exposures and risks from fludioxonil as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario is not required.

ii. *Chronic exposure and risk*. Tolerance level residues and 100% crop treated were assumed to calculate theoretical maximum residue contribution (TMRCs) for the United States (U.S.) population and population subgroups from residues on published and proposed uses. Chronic exposure from food uses of fludioxonil represents 4% of the RfD for the U.S. population and 22% of the RfD for non-nursing infants (<1yr), the subgroup most highly exposed.

2. *From drinking water*. Fludioxonil is not expected to impact ground or surface water resources. Available data suggest fludioxonil has a relatively low potential to leach to groundwater and move in runoff to aquatic environments. There is no established Maximum Contaminant Level (MCL) for residues of fludioxonil in drinking water. No

health advisory levels for fludioxonil in drinking water have been established.

The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to fludioxonil in surface and groundwater. The DWLOCs are calculated by subtracting from the RfD the respective chronic dietary exposure attributable to food to obtain the acceptable exposure to fludioxonil in drinking water. Default body weight (70 kg for males, 60 kg for females, and 10 kg for non-nursing infants < 1 year old) and default drinking water consumption estimates (2 L/day for adults, 1 L/day for non-nursing infants) are then used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or groundwater at which aggregate exposure to the chemical is not of concern.

Using Generic expected environmental concentration (GENEEC) (surface water) and Screening Concentration in GROund Water(SCI-GROW) (groundwater) models, the Agency has calculated chronic Tier I Estimated Environmental Concentrations (EECs) for fludioxonil for use in human health risk assessments. These values represent the upper bound estimates of the concentrations of fludioxonil that might be found in surface and ground water assuming the maximum application rate allowed on the label of the highest use pattern. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk*. In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario was not conducted.

ii. *Chronic exposure and risk*. Using the SCI-GROW model, the maximum long-term estimated concentration in groundwater is not expected to exceed 0.08 parts per billion (ppb). The chronic estimated concentration in surface water, using the GENEEC model, is 7.8 ppb. The DWLOC for the most sensitive adult subgroup, non-Hispanic females other than black or white was calculated to be 850 ppb; DWLOCs for all other adult population groups are even higher. As even the upper bound concentrations of fludioxonil in groundwater and surface water are not expected to exceed the calculated DWLOC, the Agency concludes with reasonable certainty that chronic exposure to fludioxonil in drinking water is not of concern.

3. *From non-dietary exposure*. Fludioxonil is currently not registered for use on non-food sites that would result in non-occupational, non-dietary exposure; therefore, no such exposure is expected.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario was not conducted.

2. *Chronic risk*. Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 4% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year in age (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic environmental concentrations of fludioxonil in surface water and groundwater do not exceed chronic DWLOCs calculated by the Agency. EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

No toxicological endpoints of concern were identified for acute oral exposure, short-term dermal exposure or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

4. *Aggregate cancer risk for U.S. population*. Fludioxonil has been classified as a Group D- not classifiable as to human carcinogenicity- chemical by the Cancer Peer Review Committee. The Group D classification was based on the statistically significant increase in liver tumors in female rats for combined adenoma/carcinoma only, the lack of a tumorigenic response in male rats or in either sex of the mouse, and the need for additional mutagenicity studies.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fludioxonil residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of fludioxonil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the

additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. In the rat developmental study, the maternal (systemic) NOAEL was 100 mg/kg/day, based on reduction in mean body weight gain in dams during gestation period at the lowest observed effects level (LOEL) of 1,000 mg/kg/day. The developmental (fetal) NOAEL was 100 mg/kg/day, based on increased fetal and litter incidence of dilated renal pelvis and dilated ureter at the LOEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal (systemic) NOAEL was 10 mg/kg/day, based on decreased body weight gains and food efficiency at the LOEL of 100 mg/kg/day. The developmental (pup) NOAEL was 300 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study*. In the 2–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on clinical signs and decreased body weight, body weight gain and food consumption at the LOEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females). The reproductive/developmental (pup) NOAEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on reduced pup weights at the LOEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females).

iv. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating pre- and post-natal toxicity for fludioxonil is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2–generation rat reproductive toxicity study.

v. *Conclusion*. There is a complete toxicity database for fludioxonil and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. In reviewing the toxicity data base, no toxicological endpoints were identified which could be attributable to a single dietary exposure. Therefore a risk assessment for this exposure scenario was not conducted.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 22% of the RfD for non-nursing infants less than one, the subgroups most highly exposed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Because the chronic DWLOCs are not exceeded by estimated chronic environmental concentrations in groundwater or surface water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

No toxicological endpoints of concern were identified for acute oral exposure, short-term dermal exposure or inhalation exposure for all time periods. Risk assessments for these exposure scenarios were not conducted.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fludioxonil residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood based on a metabolism study submitted for seed treatment use on potatoes. The residue of concern is the parent compound, fludioxonil, only. There are no livestock feed items associated with the proposed use on strawberries. Therefore, the nature of the residue in animals is not germane to these section 18 requests or to the establishment of this tolerance.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (GC/NPD) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of fludioxonil are not expected to exceed 2.0 ppm in/on strawberries as a result of the proposed section 18 use. Secondary residues are not expected in animal commodities as there are no feed items associated with the strawberry use.

D. International Residue Limits

There are no Codex residue limits established for fludioxonil, and no Canadian or Mexican residue limits for fludioxonil use on strawberries.

E. Rotational Crop Restrictions

No crops may be planted for at least 30 days following the last application of fludioxonil. The crop rotation restriction for cyprodinil, the other active ingredient in Switch 62.5 WG, prohibits planting any crop other than strawberries.

V. Conclusion

Therefore, the tolerance is established for residues of fludioxonil in strawberries at 2.0 ppm.

VI. Objections and Hearing Requests

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

Any person may, by June 21, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov.

Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300832] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 2, 1999.

Donald Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. Section 180.516, is amended by alphabetically adding the following commodity to the table in paragraph (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	* * *	
Strawberry	2.0	5/31/00

* * * * *

[FR Doc. 99–9709 Filed 4–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300836; FRL–6074–4]

RIN 2070–AB78

Dimethyl phosphate of 3-hydroxy-N-methyl-cis-crotonamide (monocrotophos) Final rule; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the revocation of tolerances for Dimethyl phosphate of 3-hydroxy-*N*-methyl-*cis*-crotonamide (monocrotophos) for residues of sugarcane, potatoes, cotton seed, peanuts, peanut hulls, and tomatoes. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. The regulatory actions indicated in this document pertain to the final revocation of tolerances and/or exemptions, which count toward the August, 1999, review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation becomes effective April 21, 1999. Objections and requests for hearings must be received on or before July 20, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IV of the SUPPLEMENTARY INFORMATION section of this notice. Be sure to identify the appropriate docket number [OPP–300836], which is an addendum to a previous docket.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Jamil Mixon, Reregistration Branch I, mail code (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Reregistration Branch I, CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8032; e-mail: mixon.jamil @epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

You may be affected by this notice if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under FFDCA section 408. In this notice, the tolerance actions are proposed in coordination with the cancellation of associated registrations. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers Contractors [Certified/ Commercial Applicators, Handlers, Advisors, etc.] Commercial Processors Pesticide Manufacturers User Groups Food Consumers
Food Distributors	Wholesale Contractors Retail Vendors Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities	Governments, Growers, Trade Groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register** - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–300836], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

III. Can I Challenge the Agency's Final Decision Presented in this Document?

Yes. You can file a written objection or request a hearing by June 21, 1999 in the following manner:

A. By Paper

Written objections and hearing requests, identified by the document control number [OPP–300836], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, room M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to room 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

B. Electronically

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending e-mail to opp-docket@epamail.epa.gov, per the instructions given in ''By Paper'' above. Electronic copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300836]. Do not submit CBI through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository libraries.

IV. Why Is EPA Revoking the Tolerances Discussed below?

On June 13, 1988, the producer of monocrotophos requested voluntary cancellation of all registrations with a recall of all products in the channels of trade that would not be used by September 30, 1989. The last registered uses for monocrotophos were cancelled on January 22, 1991, for nonpayment of the March 1, 1990, maintenance fees. On June 9, 1993, the Agency's proposed revocation of tolerances for monocrotophos was published in the **Federal Register** (FRL–4183–6). Comments were received from Ciba-Geigy Corporation, now Novartis Crop Protection, Inc. and Biologic Research & Development Inc., a U.S. regulatory consultant for the Shell International Chemical Company, expressing strong interest in maintaining tolerance on commodities imported into the United States. As a result, the Agency allowed tolerances to remain on peanut hulls, cottonseed, potatoes, sugarcane, and tomatoes.

On January 22, 1999, Novartis Crop Protection Inc. the sole producer of monocrotophos, informed EPA that it no longer intended to support monocrotophos tolerances for import purposes. Novartis indicates that sale of monocrotophos will end in 1999, and has requested that tolerances for import purposes be retained until December 31, 2000, in order to fully utilize their existing stock. As Novartis is the sole producer of monocrotophos, EPA believes that there is no one else who will support tolerances for monocrotophos for import commodities. Therefore, EPA is revoking these tolerances for monocrotophos in or on peanuts, peanut hulls, tomatoes, cottonseed, potatoes and sugarcane (§ 180.296) and in concentrated tomato products (§ 185.2250).

V. What Action Is Being Taken?

This final rule revokes the FFDCA tolerances for residues of certain specified pesticides in or on certain specified commodities. EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained or EPA independently verifies that the tolerance is no longer needed.

In the **Federal Register** of June 9, 1993, (OPP–300836) (FRL 4183–6), EPA issued a proposed rule for specific pesticides announcing the proposed revocation of tolerances for canceled food uses and inviting public comment for consideration and for support of tolerance retention under FFDCA standards. The following comments were received by the agency in response

to the document published in the **Federal Register**:

1. Comments from a letter received from Ciba-Geigy Corporation July 27, 1993, stated that, '' Monocrotophos is used extensively in many countries around the world. The major uses in these countries are on crops such as sugarcane, potatoes and cottonseed.'' In addition Ciba-Geigy requested that, ''the Agency withhold preceding to revoke residue tolerances for monocrotophos on cottonseed, potatoes and sugarcane at this time. Revoking these tolerances could create a non tariff trade barrier and should therefore be avoided to the extent possible. Ciba's proposal is to convert these domestic tolerances '' to import tolerances which will help facilitate free trade.''

Agency Response. The Agency allowed tolerances to remain on peanut hulls, tomatoes, cottonseed, potatoes and sugarcane (§ 180.296) and in concentrated tomato products (§ 185.2250).

2. Comments from correspondence received August 4, 1993, from Biologic Research & Development Inc., than a U.S. regulatory consultant for the Shell International Chemical Company, requested that EPA reconsider its proposal to revoke the existing U.S. tolerances for monocrotophos, but rather allow for a review of those tolerances in recognition of on going international uses of this compound and those residues likely to occur in commodities imported into the U.S.

Agency Response. The Agency allowed tolerances to remain on peanuts, peanut hulls, tomatoes, cottonseed, potatoes and sugarcane (§ 180.296) and in concentrated tomato products (§ 185.2250).

VI. When do These Actions become Effective?

Tolerance revocation for monocrotophos becomes effective December 31, 2000, per the manufacturer's request to fully utilize its remaining existing stock. If you have comments regarding existing stocks, please submit comments as described in Unit IV of the SUPPLEMENTARY INFORMATION section of this notice.

Section	Commodity	Parts per million	Expiration/Revocation Date
180.296	Peanuts hulls	0.5	12/31/2000
	Tomatoes	0.5	12/31/2000
	Cottonseed	0.1	12/31/2000
	Potatoes	0.1	12/31/2000
	Sugarcane	0.1	12/31/2000
	Peanuts	0.05	12/31/2000
185.2250	Tomato concentrated products	2.0	12/31/2000

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this notice, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the Food Quality Protection Act (FQPA). Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

VII. How do the regulatory assessment requirements apply to this action?

A. Is this a ''Significant Regulatory Action''?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action.'' The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not ''significant'' unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this Action Contain Any Reporting or Recordkeeping Requirements?

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this Action Involve Any ''Unfunded Mandates''?

No. This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of

regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does Executive Order 12898 Apply to this Action?

No. This final rule does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994).

F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are There Any International Trade Issues Raised by this Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

I. Is this Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. Sec. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additive, Pesticides and pest.

Dated: April 12, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 is amended to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

b. By revising § 180.296 to read as follows:

§ 180.296 Dimethyl phosphate of 3-hydroxy-N-methyl-cis-crotonamide; tolerance for residues.

(a) *General.* Tolerances are established for residues of the insecticide Dimethyl phosphate of 3-hydroxy-*N*-methyl-*cis*-crotonamide in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation date
Cottonseed	0.1	12/31/00
Peanuts	0.05	12/31/00

Commodity	Parts per million	Expiration/ Revocation date
Potatoes	0.1	12/31/00
Sugarcane	0.1	12/31/00
Tomato	0.5	12/31/00
Tomato, concentrated products	2.0	12/31/00

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

2. In part 185:

PART 185— [AMENDED]

a. The authority citation for part 185 is revised to read as follows:

Authority: 21 U.S.C. 346(a) and 348.

§ 185.2250 [Removed]

b. By removing § 185.2250 *Dimethyl phosphate of 3-hydroxy-N-*methyl-*cis-crotonamide; tolerance for residues.*

[FR Doc. 99–10006 Filed 4–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300719A; FRL–6075–7]

RIN 2070–AB78

Mepiquat Chloride; Pesticide Tolerances for Emergency Exemptions, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correction.

SUMMARY: This document corrects a tolerance regulation which established time-limited tolerances for residues of mepiquat chloride, (*N,N*-dimethylpiperidinium chloride) in or on grapes and raisins.

DATES: This correction is effective September 29, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Taking?

EPA is making a minor correction to a tolerance regulation that it issued in the **Federal Register** on September 29, 1998 (63 FR 51841; FRL–6032–6). The tolerance regulation established time-limited tolerances for residues of mepiquat chloride (*N,N*-dimethylpiperidinium chloride) in or on grapes at 1.0 part per million (ppm) and raisins at 6.0 ppm. The regulation amended 40 CFR 180.384 and 186.2275. EPA established this time-limited tolerance on its own initiative pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6).

This document corrects the amendatory instructions that were provided for § 186.2275 in the September 29, 1998 **Federal Register** document. Specifically, on page 51848, in the first column, under part 186, the amendatory instruction ''b'' is corrected to read as follows:

''b. In § 186.2275, by transferring the entry for 'cottonseed meal' from the table and adding it alphabetically to the table in newly designated paragraph (a) of § 180.384, and by removing the remainder of § 186.2275.''

II. Why Is this Technical Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, the corrections contained in this action will simply correct the erroneous instructions for amending § 186.2275 contained in the September 29, 1998 **Federal Register** document. These instructions do not in any way impact the action presented in the September 29, 1998 **Federal Register** document. EPA therefore finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment.

III. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

EPA's compliance with these statutes and Executive Orders for the issuance of the underlying rule is discussed in the preamble for that rule (63 FR 51841, September 29, 1998).

IV. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of September 29, 1998. Pursuant to 5 U.S.C 808(2), this determination is

supported by the brief statement in Unit II. of this preamble. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Correction

In FR Doc. 98–25984, in the September 29, 1998 issue of the **Federal Register**, on page 51848, in the first column, under part 186, correct amendatory instruction ''b.'' to read as follows:

''b. In § 186.2275 by transferring the entry for 'cottonseed meal' from the table and adding it alphabetically to the table in newly designated paragraph (a) of § 180.384, and by removing the remainder of § 186.2275.''

List of Subjects 40 CFR Parts 180 and 186

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

Dated: April 2, 1999.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–10005 Filed 4–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[SW–FRL–6319–5]

Texas; Final Full Program Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination of full program adequacy for the State of Texas.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive household hazardous waste or conditionally exempt small quantity generator waste, comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the EPA to determine whether States have ''adequate'' permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations.

Texas applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Texas' application and made a tentative determination that Texas' MSWLF permit program is adequate to ensure compliance with the revised MSWLF criteria. After allowing for public comment, EPA today is granting final approval to Texas' full solid waste program.

EFFECTIVE DATE: The determination of the adequacy of the Texas program shall be effective on April 21, 1999.

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, UST/Solid Waste Section (6PD–U), EPA Region 6, 1445 Ross Ave, Dallas, Texas 75202–2733, phone 214/665–6454.

SUPPLEMENTARY INFORMATON:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the HSWA of 1984, requires States to develop permitting programs to ensure that facilities comply with the Federal criteria in 40 CFR part 258. Subtitle D also requires, in section 4005, that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal criteria at 40 CFR part 258. As the first step to fulfill this requirement, the Agency drafted a State/Tribal Implementation Rule (STIR), in 1991, and published in 1996 (61 FR 2584, Jan. 26, 1996), which States used to apply for a determination of program adequacy and which EPA would use to approve, partially approve, or disapprove State landfill permit programs. Since 1992, the Agency has approved adequate State MSWLF permit programs as applications are submitted. Approved State permit programs provide interaction between the State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State permit program allows such flexibility. The EPA notes that regardless of the approval status of a State and the permit status of any facility, the Federal criteria will apply to all permitted and unpermitted MSWLFs. Due to a recent decision by the U.S. Court of Appeals for the District of Columbia Circuit (*Backcountry Against Dumps* versus *EPA*, 100 F.3d 147 (DC Cir. 1996)), tribes are viewed as municipalities rather than as states under RCRA and therefore, the Agency cannot approve tribal landfill permitting programs. To reflect the court decision, references to tribes have been deleted from the final rule. Thus, although the proposed rule was titled STIR we refer to the final rule as the State Implementation Rule (SIR). On October 23, 1998, EPA published SIR (63 FR 57025) that provides procedures by which EPA will approve, partially approve, or disapprove State landfill permit programs.

Part 40 CFR 239 (63 *FR* 57040) outlines several minimum requirements for ''adequate'' permit programs. These requirements include that states must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Additionally, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the State must show it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Regions will determine whether a State has submitted an ''adequate'' program based on the interpretation outlined above. The EPA has provided specific criteria for this evaluation in the SIR. The EPA expects States to meet all of these requirements for all elements of an MSWLF program before it gives full approval to an MSWLF program.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill criteria for certain classifications of landfills (proposed rule 58 *FR* 40568, July 28, 1993). Thus, for certain small landfills that fit the small landfill exemption as defined in 40 CFR part 258.1(f), the Federal criteria were effective on October 9, 1995, rather than on October 9, 1993. The final rule on the effective date extension was published in the **Federal Register** October 1, 1993 (58 *FR* 51536).

On August 10, 1995, the EPA published a proposed rule to solicit comments on a two-year delay, until October 9, 1997, of the general compliance date of the MSWLF criteria for qualifying small MSWLFs (60 *FR* 40799). This allowed EPA time to finalize the proposed alternatives. The final rule granting the delay of the

compliance date was published in the **Federal Register** on October 6, 1995 (60 *FR* 52337).

B. State of Texas

On August 4, 1993, Texas submitted an application for a full adequacy determination for the State's MSWLF permit program. On December 17, 1993, EPA published a final determination of partial program adequacy for Texas' program. Further background on the final determination of partial program adequacy appears in 58 *FR* 65986 (December 17, 1993) and in 58 *FR* 44821 (August 25, 1993). In those actions, EPA approved all portions of the State's MSWLF permit program except Texas' regulations exempting certain small landfills in arid regions from ground water monitoring requirements. On May 7, 1993 the U.S. Court of Appeals for the District of Columbia Circuit Court (*Sierra Club* v. *EPA*, 992F.2d 337 (D.C.Cir. 1993)) directed EPA to eliminate an exemption from ground water monitoring for small landfills in arid and remote locations (40 CFR 258.1 (f)(1)).

The court held that ''* * * the Agency must revise its final rule to require groundwater monitoring, as necessary to detect contamination, at all landfills. While such factors as size, location and climate may affect the extent or kind of monitoring necessary to detect contamination at a specific facility, they cannot justify exemption from the statutory monitoring requirement.'' Thus, the Court vacated the small landfill exemption as it pertains to ground water monitoring, directing the Agency to ''* * * revise its rule to require groundwater monitoring at all landfills.'' For that reason, EPA directed Texas to remove the exemption for certain small landfills in arid regions from ground water monitoring. However, with EPA's concurrence, Texas deferred repealing the exemption until EPA adopted a new standard.

On March 26, 1996, the Land Disposal Program Flexibility Act of 1996 was passed (P.L. 104–119, March 26, 1996) providing explicit authority for the ground water monitoring exemption, whereupon EPA reestablished the ground water monitoring exemption (61 *FR* 50410 September 25, 1996) that had been vacated by the Court. Therefore, on September 23, 1997, Texas applied for a determination of full program adequacy, since it had retained the ground water monitoring exemption in its rules and was now in conformity with the revised Federal criteria.

The EPA has reviewed Texas' application and has determined that all portions of the State's application are consistent with the revised Federal criteria. In its application, Texas demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal criteria. In addition, the State of Texas also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

C. Public Comments

The public comment period on EPA's tentative determination began on September 16, 1998, and closed on October 16, 1998. No public comments were received.

Texas does not claim jurisdiction over Indian lands.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any state enforcement program. As EPA explained in the preamble to the MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA to be in compliance with the Federal criteria. *See* 56 *FR* 50978, 50995 (October 9, 1991).

D. Decision

After allowing for the public comment, EPA concludes that Texas' application for a full program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted a determination of full program adequacy for all areas of its municipal solid waste permit program.

This action takes effect on the date of publication. The EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to delay the effective date.

Children's Health Protection

Under Executive Order (E.O.) 13045, for all significant regulatory actions as defined by E.O.13045, EPA must provide an evaluation of the environmental health or safety effect of a proposed rule on children and an explanation of why the proposed rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This is not a significant regulatory action and is exempt from E.O. 13045.

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 6 of E.O. 12866.

Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of the affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's action implements requirements specifically set forth by the Congress in sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to today's action.

Compliance With Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to today's action, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's action implements requirements specifically set forth by the Congress in sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to today's action.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by part 258 to the extent the State permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR part 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR part 258 requirements. Today's action, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing today's document and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of today's action in the **Federal Register**. Today's action is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year.

Today's action contains no Federal mandates (under the regulatory provisions of Title of the UMRA) for State, local, or tribal governments or the private sector. Today's action would merely acknowledge the adequacy of a portion of an existing State program. The EPA has determined that this action would not contain any Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate or the private sector in any one year. Therefore, today's action is not subject to the requirements of section 202 of the UMRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This action is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: March 10, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 99–8337 Filed 4–20–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC72

Disaster Assistance; Cost-share Adjustment

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule accomplishes three objectives. First, it establishes the financial criteria under which we, FEMA, recommend to the President a cost-share adjustment for permanent restorative work and for emergency work under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). Second, the rule states that we recommend capping the Federal share of assistance at ninety percent (90%.) Third, we raise the $64 statewide per capita threshold that we have used since 1985 for recommending cost-share adjustments to current dollars, and will adjust that threshold annually in future years. The new threshold is phased in over a gradual period. The rule in no way affects the current process under which the President sometimes grants one hundred percent (100%) Federal funding for emergency work, including direct Federal assistance, for limited periods following disaster declarations when the emergency needs warrant it.

EFFECTIVE DATE: This rule is effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–4066, (facsimile) 202–646–4060, or (email) patricia.stahlschmidt@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1998, we published a proposed rule on cost-share adjustment under the Stafford Act, 42 U.S.C. 5121 *et seq.* in the **Federal Register** at 63 FR 10816. We invited comments for 60 days ending on May 4, 1998. We received nine sets of comments: two from State and local government organizations; six from States; and one from a local government. Three commenters generally supported placing the criteria in regulation and annually adjusting the threshold for inflation, and one commenter agreed with the ninety percent (90%) cap on the Federal share of assistance. Most commenters objected to various aspects

of the rule. Following is a summary of the comments and our responses.

Evaluation of Cost-share Adjustments

One of the most frequent comments was that there was no evaluation or analysis of the original threshold for recommending cost-share adjustments, and therefore there is no basis for raising this threshold to current dollars. Further comments along this line argued that the proposed threshold fails to consider State capability and does not provide an incentive for mitigation. We acknowledge that there was no analysis of the original $64 per capita threshold for recommending cost-share adjustments. However, that threshold is widely recognized and we have used it consistently since 1985 when we recommended the first cost-share adjustment. We do not intend, and never intended, to measure State capability or to provide an incentive for mitigation through this rule. Rather, the $64 threshold is simply a yardstick to determine when the economic impact of a disaster is of such severity that it warrants recommendation for a cost-share adjustment. We are quite willing to work with our State partners to identify capability or mitigation measures that might justify consideration of a cost-share adjustment. However, we view that as a longer-term effort separate from this rule. With respect to measuring economic impact, no commenters offered alternatives to the use of a per capita impact although two did suggest that we lower the threshold to $50 per capita. We believe instead that the 1985 threshold should be brought up to current dollars and adjusted annually using the Consumer Price Index for All Urban Consumers, since that is the legislative basis for annually adjusting the small project grants under the Public Assistance Program and grants under the Individual and Family Grant Program.

Presidential Discretion for Cost-share Adjustments

Several commenters noted that the threshold for granting cost-share adjustments unwisely limits Presidential discretion, and fails to account for the unique circumstances of a disaster. We believe that the rule adequately allows for Presidential discretion. First, the wording of the rule has been revised to state that we would *recommend* to the President when a cost-share adjustment is warranted in recognition of the fact that the President retains the authority for actually granting cost-share adjustments. Secondly, the rule clearly recognizes that, irrespective of the economic threshold established here, the President may continue the practice of granting up to one hundred percent (100%) Federal funding for emergency work when he believes such action is warranted in the early days of the disaster.

Multiple Disasters

Several commenters noted that the rule contains no provision for multiple disasters within a State. We agree, and have revised the rule to state that we will consider the effect of major disaster declarations in a State within the preceding twelve months. The final rule does not specifically indicate how we will consider multiple disasters because that would depend on the circumstances. We need to consider the timing of the disasters, the size, and the location when we review the impact of multiple disasters. For example, two very large disasters that strike the same area of a State might have a much greater economic impact than widely disbursed small disasters in the State even though the cumulative per capita impact might be similar.

Statewide Population Factors

A number of other commenters noted that the per capita threshold should consider the relative densities within a State, or should be based on the county and not on statewide population. We will continue to base the threshold on the statewide population to reflect the supplemental nature of Federal disaster assistance and the State's preeminent role in this partnership. The declaration process itself analyzes the localized impacts of the disaster when we recommend which counties should be granted Federal disaster assistance. If a State wishes to adjust the nonfederal cost-share burden in certain areas of the State it can do so through the State/applicant split of the nonfederal cost-share.

Actual Stafford Act Obligations To Measure per Capita Impact

Several commenters noted that the nonfederal share and State administrative costs should be included in the calculation of statewide per capita impact, and that the threshold should be based on estimates. We currently consider only actual obligations when determining the per capita impact of a disaster and will continue that practice. Actual obligations provide a better and more consistent measure of the impact of a disaster than do estimates, which can vary widely from disaster to disaster and can change dramatically over the course of the disaster. In order to be consistent in our method of measuring the per capita impact we will also continue our practice of measuring Stafford Act obligations only. State administrative costs have been and will continue to be considered when we measure per capita costs though we do not include our administrative costs in the calculation.

Limitation on Use of Sliding Scales

Three commenters noted that § 320 of the Stafford Act precludes any geographic area from receiving assistance under the Act solely by virtue of an arithmetic formula or sliding scale based on income or population. We are well aware of this provision of the Act but do not violate it because the rule does not prohibit any geographic area from receiving assistance under the Act. The rule merely determines when a more favorable cost-share adjustment may be recommended.

Gross Domestic Product as a Measure of Impact

One commenter noted that in the 1993 floods that affected nine Midwestern States the President used 0.1 percent of the gross domestic product (GDP) as the measure to determine that a cost-share adjustment would be recommended for all nine States. That GDP measurement was not mentioned in the proposed rule because it has come to be a one-time-only measurement. In more recent multi-state flood disasters in the Upper Midwest and Ohio River basins we considered only the per capita threshold as the basis for recommending a cost-share adjustment.

Timeframe for Implementation

One commenter noted that the proposed timeframe for implementation is no longer relevant. We recognize that it is no longer relevant. Due to the length of time for publication, comment and review of comments, the timeframe for implementation of the new threshold will now begin in calendar year 1999 on May 21, 1999 and not in fiscal year 1998. The phase-in period to bring the threshold up to current dollars has also been extended to address concerns about the increase in the threshold.

National Environmental Policy Act

44 CFR part 10 categorically excludes this rule from its requirements. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this rule under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It establishes the financial criteria under which we would recommend a cost-share adjustment for permanent restorative work and for emergency work, and recommends capping the Federal cost-share for permanent restorative work at ninety percent (90%). The rule does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 206 is amended as follows:

PART 206 SUBPART B—THE DECLARATION PROCESS

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.47 to read as follows.

§ 206.47 Cost-share adjustments.

(a) We pay seventy-five percent (75%) of the eligible cost of permanent restorative work under section 406 of the Stafford Act and for emergency work under section 403 and section 407 of the Stafford Act, unless the Federal share is increased under this section.

(b) We recommend an increase in the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and of emergency work under section 403 and section 407 whenever a disaster is so extraordinary that actual Federal obligations under the Stafford Act, excluding FEMA administrative cost, meet or exceed a qualifying threshold of:

(1) Beginning in 1999 and effective for disasters declared on or after May 21, 1999, $75 per capita of State population;

(2) Effective for disasters declared after January 1, 2000, and through December 31, 2000, $85 per capita of State population;

(3) Effective for disasters declared after January 1, 2001, $100 per capita of State population; and,

(4) Effective for disasters declared after January 1, 2002 and for later years, $100 per capita of State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(c) When we determine whether to recommend a cost-share adjustment we consider the impact of major disaster declarations in the State during the preceding twelve-month period.

(d) If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

Dated: April 14, 1999.

James L. Witt,

Director.

[FR Doc. 99–9934 Filed 4–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; FCC 99–55]

1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order, the Commission modifies its rules to extend first come/first served processing to applications for minor changes to AM, reserved frequency noncommercial educational FM (''NCE FM'') and FM translator facilities. The Commission also expands the definition of ''minor change'' in these services to conform more closely to the commercial FM definition, which includes all changes except changes in community of license and certain changes in frequency and/or class. Finally, we amend the contingent application rule to permit the filing of up to four related and simultaneously-filed minor change FM station construction permit applications. These modifications were proposed as part of a broad-based initiative, undertaken in conjunction with the Commission's 1998 biennial regulatory review, to streamline Mass Media Bureau radio technical rules.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418–2700 or William J. Scher, Audio Services Division, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in MM Docket 98–93, adopted March 23, 1999, and released March 30, 1999. The complete text of this Report and Order is available for

inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service (ITS), (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Report and Order

I. Introduction

1. With this Report and Order, we extend first come/first served processing to AM, NCE FM and FM translator minor change applications. Furthermore, we expand the definition of ''minor change'' for these services to conform more closely to the commercial FM definition. Under these modified rules, non-expanded band AM, NCE FM and FM translator licensees and permittees may propose frequency changes to adjacent channels, and, in addition, FM translators may propose such changes to intermediate frequencies (''IF''), by filing minor change applications. Proposed changes in power, antenna height and/or antenna location for stations in these services also are classified as minor changes, provided that NCE FM and FM translator stations proposing antenna location changes would continue to provide 1 mV/m service to some portion of their authorized 1 mV/m service areas. In addition, AM stations may propose changes in authorized hours of operation by filing minor change applications. Proposed AM and NCE FM facility changes that would result in station class changes are classified as minor changes provided that they meet the standards. Amendments to applications also will be classified as minor in accordance with these standards. The measures that we are adopting make the commercial FM application process simpler, faster and more efficient, without undermining the administration of any Commission rule or policy. We anticipate that they will prove to be similarly beneficial in the AM, NCE FM and FM translator services, thereby encouraging potential applicants to file for improved facilities and speeding the introduction of improved services to the public.

II. Discussion

A. Extending First Come/First Served Processing to AM, NCE FM and FM Translator Minor Change Applications; Revising the Definition of ''Minor'' Change in These Services

Continuity of Service Requirement

2. We believe it is necessary to impose a continuity of service requirement on both NCE FM and FM translator stations proposing facility modifications. Unlike commercial AM and FM stations, our rules have not required NCE FM and FM translator stations to provide any level of service to their communities of license. Our approach here provides NCE FM and FM translator stations with maximum flexibility in proposing facility changes, while preventing such stations from completely abandoning their present service areas. We note that our proposal in the *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rule Making* (''Notice'') to require NCE FM stations to maintain 1 mV/m contours over at least a portion of their communities of license would impose an additional restriction on NCE FM station antenna location changes. As an interim measure until the Commission acts on that proposal, we shall process proposed NCE FM antenna location changes as minor changes only if the proposed changes do not diminish the stations' present 1 mV/m service to their communities of license.

AM and NCE FM Community of License Changes

3. We decline to adopt the suggestion of several commenters that we treat community of license changes in the AM and NCE FM services as minor changes. Unlike the proposed technical facility changes that we are reclassifying as minor changes, proposed AM or NCE FM community of license changes are not fundamentally technical in nature; rather, they raise important statutory and policy issues under Section 307(b) of the Communications Act, issues that require substantive legal analysis.

''Warehousing'' Concerns

4. With regard to the spectrum ''warehousing'' concerns expressed by some commenters, we are not persuaded that additional safeguards are necessary. Mechanisms for preventing abuse will continue to exist under the new rules, in the form of careful staff review of applications, the opportunity to file informal objections and seek reconsideration and review of staff actions, and strict time limits on authorized construction periods. In addition, the enhancements that an applicant may request are necessarily limited by the operation of stations on adjacent and co-channel frequencies in neighboring communities and the applicant's city grade coverage requirements.

B. Agreements Involving Applications for Coordinated FM Station Changes

5. Section 73.3517 of the Commission's rules prohibits the filing of contingent new station and modification applications in the broadcast services. The Commission first announced this policy in a 1961 Public Notice and subsequently codified the restriction. It was adopted to bring greater administrative orderliness to the broadcast licensing process. The Commission found that it was frequently holding applications in pending status that were contingent on the grant of other applications involved in lengthy hearings. An application is ''contingent'' when it cannot be granted unless and until a second application, also pending before the Commission, is granted. In the FM service, Section 73.208 requires an applicant to protect all outstanding construction permits and licenses. Thus, when an FM application is contingent on the effectuation of a second station's facility modification application, in most instances the first station must wait for the grant of the second station's covering license application before filing a construction permit application. This rule effectively requires stations to undertake ''coordinated'' facility improvements through a series of application and construction cycles, a risky, lengthy and sometimes infeasible procedure, particularly where a station downgrade or facility relocation is required to permit expanded service by a second station.

6. Based on the record developed in this proceeding, we adopt rule changes to permit applicants to file up to four related, simultaneously-filed and cross-referenced minor change FM station construction permit applications. We believe that it is prudent to limit the scope of these new procedures, both to limit the potential for significant service losses and/or disruptions and to ensure that there is sufficient staff to complete review of interrelated proposals expeditiously. Thus, we exclude major change applications. Proposals may include one-step upgrade and downgrade applications. Applicants will be required to submit a copy of the agreement to undertake the coordinated facility changes with each application. Applications will be processed together and, if grantable, will be granted simultaneously. Granted applications will contain conditions, as necessary, to prevent interference during the construction period leading to full implementation of all related facility modifications. If one or more applications is unacceptable, all related

applications will be dismissed. Thus, the staff will dismiss an otherwise grantable non-contingent ''lead'' application if a related contingent application is found to be unacceptable.

7. We believe a strict dismissal policy is warranted. The plain *quid pro quo* for creating this greater technical flexibility for broadcasters is that applicants bear sole responsibility for developing proposals that fully comply with the Commission's rules. However, we wish to correct a commenter's erroneous assumption that applicants would be prohibited from filing curative amendments. Our current commercial and NCE FM amendment procedures will apply to contingent applications. The one processing policy change is that the staff will dismiss *all* related applications if one application remains unacceptable after the opportunity for filing curative amendments has closed.

8. Finally, with regard to contingent NCE FM applications, we permit proposals that include station cancellations except those that would create gray or white areas, *i.e.*, areas that receive service from one or no NCE FM stations, respectively. Although we decline to establish other full-time NCE FM service floor guidelines, any proposal to cancel a community's sole NCE FM station license, *i.e.*, its sole transmission service, will be treated as *prima facie* inconsistent with the public interest and must include a public interest justification. We will consider a commenter's proposal to permit alternative signal propagation methodologies to measure NCE FM service levels in a subsequent order in this proceeding in connection with our evaluation of the supplemental point-to-point (''PTP'') signal propagation model.

C. Procedural Matters

9. In order to ensure a smooth transition to the new procedures, we wish to clarify our procedures for processing applications filed prior to the effective date that are subject to this Order. First, with regard to applications originally filed as minor changes, as of the effective date they will be accorded cut-off protection based on their actual filing dates, provided that they are not mutually exclusive with any other applications filed prior to the effective date. Mutually exclusive applications will be handled under our existing procedures. Second, with regard to major change applications subject to reclassification as minor changes, as of the effective date such applications will be reclassified automatically as minor changes, provided that: (1) They are not mutually exclusive with any other applications filed prior to the effective date; and (2) no petition to deny was filed against them in accordance with the requirements of Section 309(d) of the Communications Act prior to the effective date. Applications that fail to satisfy these two conditions will be handled under our existing application processing procedures. AM and FM translator applicants with major change applications on file that seek waiver of the Commission's interim policy concerning processing of such applications may request dismissal of their applications and resubmit minor change applications as of the effective date of the Order. Finally, applications pending as of the adoption date of the Order and seeking waivers of section 73.3517 will be considered on a case-by-case basis. Contingent applications filed between the adoption and effective dates of the Order shall be returned.

III. Administrative Matters

10. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service (ITS), (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

11. Paperwork Reduction Act of 1995 Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

Final Regulatory Flexibility Analysis (FRFA)

12. As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rulemaking for the docket in this proceeding. The Commission sought written public comments on the proposals set forth in the Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA.

Need For and Objectives of Action

13. Specifically, this Order (1) amends the Commission's rules to extend first come/first served processing to applications for minor changes to existing AM, NCE FM, and FM translator facilities; (2) expands the definition of minor change in these services to conform more closely to the commercial FM definition of ''minor change;'' and (3) amends the contingent application rule to permit the filing of up to four related and simultaneously-filed FM station construction permit applications. By this Order, the Commission eliminates the present inconsistent treatment of certain proposed facilities changes for AM, NCE FM and FM translator services, and provides greater flexibility for permittees and licensees to propose service improvements.

Significant Issues Raised by Public Comments in Response to the IRFAs

14. No comments were received specifically in response to the IRFA in MM Docket No. 98–93. However, four commenters expressed concern about an issue that may affect, but is not limited to, small business issues. These commenters were concerned that the new procedures could facilitate abuses by applicants resulting in the warehousing of spectrum.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

15. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. We received no comment in response to either IRFA on how to define radio and television broadcast ''small businesses.'' Therefore, we will

continue to utilize SBA's definitions for the purpose of this FRFA.

16. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. As of November 30, 1998, Commission records indicate that 12,458 radio stations were operating, of which 11,960 were small businesses. The rules adopted herein are limited to AM, NCE FM and FM translator facilities. Thus, the measures adopted here will affect 9957 such entities, 9559 of which are considered small businesses.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. The measures adopted in the Order are anticipated to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Extending first come/first served processing to AM, NCE FM and FM translator minor change applications will eliminate the uncertainty, delay and expense associated with the indefinite exposure to competing applications that occurs under the current processing system. Expansion of the minor change definition in these services to conform more closely to the commercial FM definition will eliminate unnecessarily burdensome administrative procedures, as well as minimizing the resources expended by applicants and the Commission in resolving conflicts between minor change applications. Permitting applications for coordinated FM station changes will eliminate the need to undertake coordinated improvements through a series of application and construction cycles, a risky, lengthy and sometimes infeasible procedure. No additional professional services are required by applicants filing minor change applications under these revised processing rules. Further, the cost of compliance will not vary between large and small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. This Order sets forth the Commission's new streamlined application processing changes that are intended to eliminate unnecessary administrative burdens and shorten processing time frames for certain applications. All significant alternatives presented in the comments were considered. As noted in the Order, we extend the application of first come/first served processing to AM, NCE FM, and FM translator stations. These processing changes will remedy the uncertainty and delay previously associated with AM, NCE FM and FM translator minor change applications. We also expand the definition of minor change for these services to conform more closely to the commercial FM ''minor change'' definition. This change will eliminate the inconsistent treatment of proposed facility increases for different radio services without undermining the administration of any Commission rule or policy. Finally, this Order adopts rule changes to permit applicants to file up to four related, simultaneously-filed and cross-referenced minor change construction permit applications. This change will encourage licensees and permittees to propose service improvements by making the process more efficient.

Report to Congress

19. The Commission will send a copy of the *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, including this FRFA, (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b). In addition, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

20. Authority for issuance of the Report and Order is contained in sections 4, 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C 154, 301, 303, 307, 308 and 309. Sections 73.3517, 73.3571, 73.3573 and 74.1233.

21. It is ordered that the proceeding in MM Docket 98–93 is terminated.

List of Subjects in 47 CFR Parts 73 and 74

Auxiliary broadcasting, Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3517 is amended by adding paragraph (e) to read as follows:

§ 73.3517 Contingent applications.

* * * * *

(e) The Commission will accept up to four contingently related applications filed by FM licensees and/or permittees for minor modification of facilities. Two applications are related if the grant of one is necessary to permit the grant of the second application. Each application must state that it is filed as part of a related group of applications to make changes in facilities, must cross-reference each of the related applications, and must include a copy of the agreement to undertake the coordinated facility modifications. All applications must be filed on the same date. Any coordinated facility modification filing that proposes the cancellation of a community's sole noncommercial educational FM station license also must include a public interest justification. Dismissal of any one of the related applications as unacceptable will result in the dismissal of all the related applications.

3. Section 73.3571 is amended by revising paragraphs (a)(1) and (f) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any change in community of license or in frequency, except frequency changes to non-expanded band first, second or third adjacent channels. A major change in ownership is a situation where the original party or parties to the application do not retain more than

50% ownership interest in the application as originally filed. All other changes will be considered minor.

* * * * *

(f) Applications for minor modifications for AM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a ''first come/first served'' basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *

4. Section 73.3573 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202(b)) of this part. A licensee or permittee may seek the higher or lower class adjacent channel, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Long-form applications submitted pursuant to § 73.5005 of this part for a new FM broadcast service may propose a higher or lower class adjacent channel, intermediate frequency or co-channel. For reserved frequency noncommercial educational and Class D FM stations, a major change is any change in community of license, any change in frequency except changes to first, second or third adjacent channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

* * * * *

(e) Applications for new reserved frequency noncommercial educational FM stations and for major modifications in the facilities of authorized reserved frequency noncommercial educational and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed. Applications for minor modifications for reserved frequency noncommercial educational and Class D FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a ''first come/first served'' basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

5. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307 and 554.

6. Section 74.1233 is amended by revising paragraphs (a)(1), (b) and (d)(1) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

(a) * * *

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

* * * * *

(b) Processing booster and reserved band FM translator applications.

(1) Applications for minor modifications for reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a ''first come/first served'' basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead

application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(2) All other applications for booster stations and reserved band FM translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing reserved band applications that have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

* * * * *

(d) * * *

(1) Applications for minor modifications for non-reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a ''first come/first served'' basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *

[FR Doc. 99–9951 Filed 4–20–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

50 CFR Part 648

National Oceanic and Atmospheric Administration

[I.D. 111998B]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments to Designate Essential Fish Habitat (EFH), Atlantic Salmon Overfishing Definition, and Aquaculture Framework Specification Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of amendments to FMPs.

SUMMARY: NMFS announces that the Secretary of Commerce (Secretary) has approved Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. These amendments were prepared by the New England Fishery Management Council (NEFMC) to implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendments describe and identify EFH for the specified fisheries, discuss measures to address the effects of fishing on EFH, and identify other actions for the conservation and enhancement of EFH. Atlantic Salmon Amendment 1 also discusses a definition for overfishing and establishes an aquaculture framework adjustment process for Atlantic salmon.

The amendments are included in an omnibus amendment that also includes Amendment 1 to the Monkfish FMP prepared jointly by NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC). Because of additional time required for coordination with MAFMC, the monkfish FMP amendment is being considered for Secretarial approval in a separate action. Finally, the omnibus amendment includes the EFH components of the Atlantic Herring FMP that are being developed by the NEFMC. The EFH information for Atlantic Herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval.

DATES: The amendments were approved on March 3, 1999.

ADDRESSES: Copies of the amendments and the Environmental Assessment (EA) are available from the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978–281–9204 or Jon.Kurland@NOAA.gov.

SUPPLEMENTARY INFORMATION:

Background

The omnibus EFH amendment was prepared by NEFMC to satisfy the EFH mandates of the Magnuson-Stevens Act. The omnibus amendment includes an Environmental Assessment (EA), which describes the background, purpose and need for the action, the management action alternatives, and the environmental, social and economic impacts of the alternatives. A copy of the EA can be obtained from the NEFMC (see **ADDRESSES**).

A notice of availability (NOA) for Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP was published on December 1, 1998 (63 FR 66110). The comment period ended on February 1, 1999. An amendment to the NOA was issued on December 7, 1998 (63 FR 67450) to clarify that Atlantic Salmon Amendment 1 also discusses an overfishing definition and establishes a framework process to add or adjust Atlantic salmon aquaculture management measures, if necessary, to meet the goals and objectives of the Atlantic Salmon FMP. A second amendment to the NOA, issued January 6, 1999 (64 FR 823), clarified that there would be implementing regulations to allow for Atlantic salmon aquaculture through a framework adjustment process. The proposed rule for these regulations was published on February 5, 1999 (64 FR 5754). The comment period closed on March 22, 1999.

The omnibus EFH amendment designates EFH in waters of the United States for 14 species of groundfish, as

well as Atlantic sea scallops and Atlantic salmon. The omnibus amendment designates Habitat Areas of Particular Concern (HAPC) for Atlantic salmon and juvenile Atlantic cod in accordance with 50 CFR 600.815(a)(9). Although no new management measures are proposed for these HAPC, the Atlantic cod HAPC would be protected from potential adverse effects from fishing by maintaining the existing restrictions on fishing for the region known as Closed Area II on Georges Bank, pursuant to 50 CFR 648.81(b). In addition to the original rationale for implementing Closed Area II in 1994 (reducing overfishing of severely depleted groundfish stocks, as noted in the preamble to the emergency interim rule published in the **Federal Register** 59 FR 63926, December 12, 1994), under the omnibus amendment these management measures would be retained for habitat protection reasons.

In addition to the amendments for the Northeast Multispecies, Atlantic Sea Scallops, and Atlantic Salmon FMPs, the omnibus amendment also includes Amendment 1 to the Monkfish FMP and the EFH components of the Atlantic Herring FMP that is being developed by NEFMC. Monkfish Amendment 1 was submitted for Secretarial review under separate action on January 22, 1999 (64 FR 3480), and the comment period closed on March 23, 1999. The EFH information for herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial review, and an NOA will be published in the **Federal Register**.

Amendment 1 to the Atlantic Salmon FMP also includes an aquaculture framework process and information on an overfishing definition for Atlantic salmon. The overfishing definition is based on the assumption that the number of spawning salmon corresponding to maximum sustainable yield is 54,000 (a proxy for B_{msy}) and that fishing mortality on the current stock of 200 fish should be zero. No biomass threshold is given that describes when fishing mortality can be greater than zero. However, overfishing is not occurring in this fishery since fishing mortality in the exclusive economic zone has been reduced to zero and is expected to stay at zero for the foreseeable future. NMFS informed the Council that should the status of the resource change, it would need to revisit the overfishing definition to clarify what level of fishing mortality is appropriate to rebuild the resource to a sustainable level. In the interim, the omnibus amendment is providing maximum protection to conserve Atlantic salmon habitat and may offer solutions to enhance Atlantic salmon spawning habitat.

Amendment 1 to the Atlantic Salmon FMP also contains an aquaculture framework process to allow the Council to initiate action to implement, add or adjust Atlantic salmon management measures, provided that such an action is consistent with the goals and objectives of the Atlantic Salmon FMP. The proposed rule to implement the aquaculture framework process was published on February 5, 1999 (64 FR 5754). NMFS anticipates that a final rule will be published within the next few weeks.

NMFS determined that Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP are consistent with the Magnuson-Stevens Act and other applicable laws, and approved these amendments on March 3, 1999. Additional information on this action is contained in the NOA published on December 1, 1998 (63 FR 66110).

Upon initial consideration, it appeared that regulations to implement the EFH provisions of the amendments were not required. However, NMFS subsequently determined that implementing regulations are required to add the framework specification process for designating EFH and HAPC to existing regulations for the Northeast Multispecies FMP, the Atlantic Sea Scallop FMP, and the Atlantic Salmon FMP. NMFS will initiate these rulemaking actions in the near future.

Comments and Responses

Eight letters were received during the comment period, including four from environmental organizations (two from the American Oceans Campaign and one each from Marine Fish Conservation Network and Conservation Law Foundation), two from the fishing industry (Cape Cod Commercial Hook Fisherman's Association and Fisheries Survival Fund), one from the U.S. Department of State, and a joint letter from Maine Pulp and Paper Association and Maine Forest Products Council.

Comments on Identification and Description of EFH

Comment: One commenter stated that the EFH designations were overly broad and exceeded the intent of Congress. The commenter cited specific concerns about the designation for Atlantic salmon extending into state waters, including inland rivers upstream of manmade barriers, which will affect non-fishing interests and activities in adjacent upland areas. Other commenters noted that the Council had done a good job at using the precautionary approach to EFH identification.

Response: The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH may be sufficiently broad to encompass the biological requirements of the species. The information that the Council used for EFH designation was primarily species distribution and relative abundance data, which would be classified as ''level 2'' information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the precautionary approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Council's EFH designation for Atlantic salmon is consistent with these requirements.

Comment: An environmental organization commented that biological attributes such as epiflora and epifauna should have been included in the EFH text descriptions.

Response: The information that was available for EFH designation by the Council consisted primarily of regional species abundance and distribution. Although some species- specific information exists that indicates species associations with more complex habitat such as that including epiflora and/or epifauna, it is unclear whether or to what degree these habitat attributes are actually essential.

Comment: One environmental organization commended the Council's designating the HAPC for juvenile cod and its adding protection of EFH as a reason for the basis of the current closure to fishing in the area. Another environmental organization stated that HAPCs should be designated for all species under management.

Response: The EFH regulations (50 CFR 600.815(a)(9)) suggest the designation of HAPCs, which are defined as areas that are ecologically important, sensitive to human-induced degradation, impacted by development activities, or rare. It is conceivable that many areas of Council-designated EFH could satisfy these criteria. The Council

has designated HAPCs for both juvenile cod and Atlantic salmon based on readily available information and has committed in its strategic plan to continue to evaluate further HAPC designations.

Comments on Impacts to EFH from Fishing Gear

The majority of comments from the environmental organizations and one fishing industry association addressed the section of the amendments that evaluated the impacts of fishing gears on EFH, and measures to minimize any such impacts.

Comment: Two commenters stated that the amendments did not adequately evaluate the impacts of fishing gear on EFH. The commenters found that the evaluation of impacts in the amendments was cursory and did not specifically evaluate the impacts of each fishing gear on each type of EFH. One of the commenters pointed out that the Council did not follow the recommendations of the NMFS EFH technical guidance in addressing this topic and stated that a lack of sufficient detail in the discussion of fishing gear impacts was an impediment to public involvement, since it was difficult for the public to ascertain the reasoning behind the conclusions. The commenter also identified that cumulative impacts from fishing gears were not assessed.

Response: The Council approached the evaluation of impacts from fishing gears methodically. It identified the major gears used in the region based on landings; described the major gears; identified that otter trawls and scallop dredges were the most likely to have adverse impacts on habitat; appended a summary of the literature on fishing gear impacts to habitat; and described other impacts from fishing activities such as the impacts of fishing-related marine debris and lost gear, impacts of aquaculture, and impacts of at-sea fish processing. The Council also evaluated fisheries management measures currently in place, and determined their impact on EFH. Finally, the Council identified a number of areas that required further research in order to provide a better basis for determining fishing gear impacts, such as the spatial distribution and extent of fishing effort for gear types; the effects of specific gear types along a gradient of effort on specific habitat types; and recovery rates of various habitat types following fishing activity. The information in the document could have been presented in a more convenient manner (e.g., rather than the fishing impacts summary being appended it could have been synthesized into the document). This would have addressed the comment regarding the need for a thorough discussion of the Council's deliberations on fishing gear impacts, which is duly noted. However, based on the information available, the Council satisfied the requirements of the EFH regulations (50 CFR 600.815(a)(3)) regarding the assessment of fishing gear impacts.

The Council was not required to implement the recommendations of the draft NMFS EFH Technical Guidance (NMFS 1998); nor was it required to address cumulative impacts, absent adequate information.

Comment: The majority of environmental organizations and one fishing industry association stated that the amendments did not satisfy the Magnuson-Stevens Act requirements to minimize impacts from fishing gears to EFH, to the extent practicable, and the commenters thought that the amendments should be disapproved, or section 4 of the document should be disapproved. One commenter requested that the amendments be disapproved, and/or that the Secretary prepare a separate EFH amendment, or promulgate emergency regulations, or pursue negotiated conservation and management measures. One of the commenters suggested that the legal basis for existing management measures should be changed to include protection of EFH, since the Council relied on these measures to provide such protection. One commenter stated that the Council did not request public input on this issue.

Response: The EFH regulations at 50 CFR 600.815(a)(3)(iv) require that the Council consider a number of factors when evaluating whether it is practicable to minimize an adverse effect from fishing. These factors include (1) whether and to what extent the fishing activity is adversely impacting EFH including the fishery; (2) the nature and extent of the adverse effect on EFH; (3) whether management measures are practicable, taking into consideration the long and short-term costs and benefits to the fishery and its EFH; and (4) any other appropriate factors.

In the amendments, the Council concludes and NMFS concurs that no additional fishing restrictions to protect EFH are practicable at this time. It bases this conclusion on a number of findings relative to the factors outlined in the EFH regulations. The Council has determined that otter trawls and scallop dredges are the New England fishery gear types most likely to have an impact on EFH. The amendments cite an appended document by Auster and Langton (1998), which describes the impacts of such bottom tending mobile fishing gears on different habitat types in general. Auster and Langton state that the direction and type of impact of these gears can be determined; however, information that is required for a complete analysis of impacts is currently unavailable. The impact rate in relationship to the effort for each gear type is required in order to evaluate the effects of fishing on different habitat types. In order to determine these relationships, effort- specific rates of impacts for different gear types would need to be determined experimentally. Auster and Langton also found that information on distribution of fishing effort is lacking. Additionally, a detailed review of the habitat types and their locations is necessary. These information needs are identified in the amendments under the section of research needs. Without this information, the Council is unable to perform a complete analysis of fishing gear impacts.

In considering whether further management measures were practicable based on impacts to the fishery and its EFH, the Council, first, reviewed current and proposed fishery management measures that could protect EFH and had already been established as ''practicable'' under the Magnuson-Stevens Act. The Council found that many potential adverse effects to EFH from fishing are already minimized because of some of the current fishery management measures under the FMPs for the Atlantic Sea Scallop Fishery and the Northeast Multispecies Fishery. Such measures include Closed Areas I and II on Georges Bank (4,150 sq. nautical miles), which prohibits all gear capable of taking groundfish (including groundfish bottom trawls and scallop dredge gear), and the Hudson Canyon South and Virginia Beach closed areas (2,300 sq. nautical miles), which prohibit the use of scallop dredges. The Council also found that other effort reduction measures, such as days-at-sea allocations and vessel size/power limits, limit impacts to EFH as well. Second, the Council determined that some management measures contained in Amendment 7 to the Atlantic Sea Scallop FMP and Amendment 9 to the Northeast Multispecies FMP, designed to fulfill requirements of the Sustainable Fisheries Act, other than EFH, will also reduce adverse impacts to EFH. These new measures include the prohibition of streetsweeper gear and, beginning in year 2 of the Atlantic sea scallop rebuilding plan, a reduction in sea scallop fishing effort by more than 50

percent. Third, the Council approved the designation of a HAPC for juvenile Atlantic cod, and stated that the current Closed Area II restrictions, pursuant to 50 CFR 648.81(b) will be maintained in the HAPC portion, for habitat protection reasons. All of these current and proposed measures are consistent with those identified in the EFH regulations for controlling fishing gear impacts to EFH. The EFH regulations at 50 CFR 600.815(a)(4) specifically list fishing equipment restrictions, time/area closures, and harvest limits as methods to control fishing gear impacts to EFH. In addition, the measures currently in place and under review for other amendments under development have been determined to be practicable for New England fisheries, have addressed socio-economic impacts, including long and short-term benefits to the fishery, and are consistent with the national standards. Neither the Magnuson-Stevens Act, nor the EFH regulations, require that fishing impacts be controlled by newly proposed management measures.

The Council found that further information is necessary before it can responsibly determine what additional practicable measures may be necessary specifically for the protection of EFH from fishing impacts. For example, information on the net effects of using one particular gear design over another, as well as the effects of effort displacement that may be associated with additional closed areas or reductions to days-at-sea, is needed. To illustrate this point, the Council considers that reductions to scallop or groundfish days-at-sea programs may have the unintended effect of forcing fisheries to be concentrated in small areas near shore, which may also be EFH. The Council points out that any additional measures that might be imposed would likely be similar to those measures currently in place to control fishing effort. In FMP amendments and framework actions to address overfishing in the New England region, fishing has already been substantially reduced. Any additional EFH protection measures would impose additional socio-economic impacts to an already stressed industry. In the amendments, the Council determines that the uncertainty associated with the actual benefits predicted from additional management measures designed to mitigate habitat impacts impedes it from concluding that the additional short- and long-term costs to the fishing industry associated with those measures would be justifiable. Based on the fisheries management measures proposed and in place that will serve to protect habitat, the economically depressed status of the fisheries, and the Council's expressed intent to continue to move forward on EFH conservation, the amendments meet the requirement of the Act to minimize fishing gear impacts on EFH to the extent practicable.

The Council added habitat protection as one of the reasons for the current closure to the juvenile cod HAPC in Closed Area II; however, the reasons for implementation of the other fishery management measures that the Council found to protect EFH were not modified to include habitat. Although this issue does not affect approvability of the amendments, NMFS agrees with the comment that the Council should identify habitat protection as a reason for any management measures it has identified as providing for the protection of EFH. Council acknowledgment of its intent to protect EFH with the fishery management measures currently in place would clarify that the habitat benefits of measures originally developed for other purposes should be considered expressly whenever future management actions are contemplated. It is noted that, under the Magnuson-Stevens Act, fishery management councils are required to evaluate the impact of management measures on EFH, regardless of the management measure's purpose.

The Council provided opportunity for public input on these amendments as required by the Magnuson-Stevens Act.

Comment: One fishing industry group opposed the permanent closure of any areas to scallop gear. One environmental organization opposed access of scallop dredges or otter trawls to currently closed areas.

Response: Since the Council retains the ability to re-open any closed area, any future closures could be reconsidered by the Council, and would not in fact be ''permanent.'' Potential scallop fishery access to existing closed areas is the subject of proposed Framework Adjustment 11 to the Atlantic Sea Scallop FMP and Framework Adjustment 29 to the Northeast Multispecies FMP, and will be addressed during the review of those actions.

Comment: One commenter suggested that all complex cobble-bottom should be protected.

Response: Further research is needed to identify all areas of this habitat type. Adoption of additional HAPCs in areas of cobble-bottom through the framework adjustment provision is a vehicle for identifying complex cobble-bottoms and/or other habitat types as particularly important. The Council has identified the designation of additional HAPCs as one of its objectives in the strategic plan portion of the amendments.

Comments on Framework Provisions

Comment: A fishing industry organization opposed the framework provision for designation of EFH, and stated that permanent closures should be subjected to the process of an amendment.

Response: The framework adjustment process for EFH designation will allow the Council to respond quickly when additional information becomes available regarding important habitats that should be classified as EFH while still allowing the opportunity for public participation. Nevertheless, the Council could decide to invoke the full amendment process if circumstances warranted. Moreover, the issue of area closures as adjustments that may be made under the framework procedures has already been addressed, and area closures have been approved under the Multispecies FMP and Sea Scallop FMP as fishery management measures that may be implemented under the framework procedures.

Comments on EFH Consultations

Comment: A commenter suggested that the consultation and conservation recommendation provisions of the Act will be burdensome and unworkable, citing that every Federal and state action, including all permitting actions that occur near coastal or inland waters, would trigger an EFH consultation. The commenter also indicated concern that the process would add little in the way of environmental benefit to fish or EFH.

Response: The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely impact EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

Comments on Atlantic Salmon Amendment 1

Comment: The commenter is concerned with how EFH and HAPC designations will impact ongoing salmon conservation efforts being implemented by Maine.

Response: NMFS is committed to ensure that EFH consultations and EFH

conservation recommendations in areas designated as EFH for Atlantic salmon will complement the goals set by the Maine Atlantic Salmon Conservation Plan. NMFS will be working closely with the State of Maine and other interested parties on this issue.

Comments on Other Issues

Comment: One fishing industry group commented that continued closure of HAPC will be a significant impact under the Regulatory Flexibility Act.

Response: NMFS does not believe that supplementing the basis for the current closure as a measure to protect juvenile cod HAPC and continuing this closure as a part of Closed Area II have any bearing on the Regulatory Flexibility Act because no additional regulatory impacts occur.

Comment: A commenter suggested that the Council establish and implement a plan for satisfying information needs with specific time frames for when objectives will be met and when notice will be provided to the public.

Response: The Council included a strategic plan in the amendments that addresses the refinement of EFH designations, designation of additional HAPCs, and improving understanding of fishing gear impacts, among other things. Since the Council is not a research body, it cannot schedule research activities to complement EFH conservation efforts. However, in its plan, the Council has committed to annual reviews of its EFH conservation program, which specifically includes identification and incorporation of ongoing and future studies as the results become available. Information on these efforts will be available to the public through the Council process.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9990 Filed 4–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 041599A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for Vessels Using Hook-and-line and Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using hook-and-line and pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal allowance of the 1999 total allowable catch (TAC) of Pacific cod allocated for vessels using hook-and-line and pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 17, 1999, until 1200 hrs, A.l.t., May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the first seasonal allowance of the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI during the time period January 1 to April 30 as 60,000 metric tons (mt). See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(A).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 59,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is closing directed fishing for Pacific cod for vessels using hook-and-line and pot gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal allowance of the 1999 TAC of Pacific cod allocated to vessels using hook-and-line and pot gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing first seasonal allowance established for vessels using hook-and-line and pot gear has been reached. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9960 Filed 4–16–99; 4:30 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 76
Wednesday, April 21, 1999

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 THE TREASURY

Customs Service

19 CFR Parts 4 and 159

RIN 1515–AC30

Foreign Repairs to American Vessels

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Customs Regulations regarding the declaration, entry, assessment of duty and processing of petitions for relief from duty for vessels of the United States which undergo foreign shipyard operations. It is intended that the Customs Regulations regarding this subject accurately reflect the amended underlying statutory authority, as well as legal and policy determinations made as a result of judicial decisions and administrative enforcement experience.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: *Operational aspects:* Glenn Seale, Supervisory Customs Liquidator, 504–670–2137. *Legal aspects:* Larry L. Burton, Office of Regulations and Rulings, 202–927–1287.

SUPPLEMENTARY INFORMATION:

Background

The genesis of the modern vessel repair statute, 19 U.S.C. 1466, is found in the Act of July 18, 1866, Chapter 24, section 23 (14 Stat. 183). A 50 percent *ad valorem* duty was imposed on the foreign cost of repairs to United States vessels documented to engage in the foreign or coastwise trade on the northern, northeastern, and northwestern frontiers (practically speaking, Great Lakes, Atlantic, and Pacific Coast trade with Canada). The statute also provided for remission or refund of duties where it was established by sufficient evidence that the vessel had been compelled to seek foreign repairs due to a weather-related or other casualty. The statute was recodified in the Revised Statutes of the United States in 1874 (R.S. 3114 and 3115), but was left largely unamended until the Act of September 21, 1922, at which time the area of consideration for dutiable repairs was expanded to include repairs to all vessels documented under U.S. law to engage in the foreign or coastwise trade, as well as those intended to be so employed.

The statute has undergone amendment several times since 1922 and has been the subject of considerable judicial interpretation over the years as well. Recently, however, the statute has been amended in significant ways and a court case with broad impact on the administration of the law has also been decided.

On August 20, 1990, the President signed into law the Customs and Trade Act of 1990 (Pub. L. 101–382), section 484E of which amended the vessel repair statute by adding a new subsection (h). Subsection (h), which by its terms expired on December 31, 1992, included two elements. These concerned the exclusion from vessel repair duty of Lighter Aboard Ship (LASH) barges, and of spare parts and materials for use in vessel repairs abroad which had previously been imported and duty paid at the appropriate rate under the Harmonized Tariff Schedule of the United States (HTSUS). Two years after the expiration of that legislation the Congress enacted section 112 of Pub. L. 103–465 which became effective on January 1, 1995. That provision permanently reenacted the previously expired 19 U.S.C. 1466(h) (1) and (2), as discussed above, and also added a new subsection (h)(3) which, as administered by Customs, provides that vessel repair duties will be assessed at the applicable HTSUS rate for spare parts which are necessarily installed on vessels overseas prior to those spare parts ever having been entered into the United States for entry and consumption, such as is necessary under the (h)(2) provision.

The most basic issue to be determined in applying the vessel repair statute to a factual situation is, of course, whether a repair has taken place within the meaning of 19 U.S.C. 1466(a). Courts have ruled extensively on the ''repair'' cost issue and the result is a continually narrowing field of dutiable repair. One early case (*United States* v. *George Hall Coal Co.*, 134 F. 1003 (1905)), was the first to find any of various types of expenses associated with repairs to be classifiable as not subject to the assessment of vessel repair duties. The case established that the expense of drydocking a vessel (regardless of the underlying need to drydock) is not an element of dutiable value in foreign repair costs. Drydocking is a major, but not isolated, expense in general ship repair operations. Many other associated expenses and services are necessary adjuncts to drydocking and are logically inseparable from the drydocking rule. These include such items as drydock block arrangement, sea water supply (for firefighting equipment), hose hook-up and disconnection charges, fire watch services, the services of a crane for drydocking-related operations, the provision of compressed air, cleaning of the drydock following repairs, among numerous others. These necessary services are costly, are supplied at nearly each drydocking, and had until recently been considered to be classifiable as duty-free.

On December 29, 1994, the United States Court of Appeals for the Federal Circuit decided the case of *Texaco Marine Services, Inc., and Texaco Refining and Marketing, Inc.* v. *United States*, 44 F.3d 1539. While this case was submitted on appeal regarding the dutiability of specific foreign shipyard operations, the Court went much further by considering the propriety of several long-standing court cases, including the opinion in *George Hall, supra.* In so doing, a whole range of charges are subjected to duty consideration which had been insulated from such treatment since 1905.

The recent upheaval in terms of both statutory amendment and judicial interpretation has resulted in the need to update the regulatory provisions which implement the vessel repair statute. This has led to the proposed revisions contained within this document, which are presented in a more streamlined and simpler format, all in conformance with the recent changes. Most significantly in this connection, the proposed amendments

eliminate the Petition for Review process, currently the second of two pre-protest appeals for relief from duty, and vest in the Vessel Repair Units full authority to process and decide Applications for Relief without restrictions as to the amount of potential duty refund or remission.

Additionally, it is proposed that the Customs Regulations in part 159 be amended to recognize that vessel repair entries are not considered to be subject to liquidation, and that any duties paid pursuant to a vessel repair entry will henceforth be considered to be charges or exactions within the meaning of subsection (a)(3) of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), the statute under which decisions of the Customs Service are protested. As such, duty determinations on vessel repair entries will be protestable but will not be subject to voluntary reliquidation or deemed liquidation procedures. This distinction will serve to recognize elements which are unique to the vessel repair entry process such as potential protracted delays in supplying cost information due to difficulty in obtaining proof of foreign expenses from shipyards in a timely fashion.

Comments

Before adopting this proposal, consideration will be given to any written comments which are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12866

The proposed amendments would revise the Customs Regulations concerning the declaration, entry, assessment of duty and processing of petitions for relief from duty, for subject vessels under the vessel repair statute. The proposed amendments are intended to accurately reflect the existing statutory authority, as well as legal and policy determinations made in this regard as the result of judicial decisions and administrative enforcement experience. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does this document meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0082. This rule does not propose any substantive changes to the existing approved information collection.

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 control number.

Drafting Information. The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Declarations, Entry, Repairs, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 159

Customs duties and inspection, Entry procedures.

Proposed Amendments to the Regulations

It is proposed to amend parts 4 and 159, Customs Regulations (19 CFR parts 4 and 159), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citation for § 4.14, would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * *

2. It is proposed to revise § 4.14 to read as follows:

§ 4.14 Equipment purchases by, and repairs to, American vessels.

(a) *General provisions and applicability.* Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States, including repairs made while those vessels are on the high seas, are subject to declaration, entry and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under U.S. law for the foreign or coastwise trades, as well as those which, although not documented under U.S. law, exhibit an intent to engage in those trades under Customs interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles which have been imported into the United States and are later sent abroad for use. For the purposes of this section, expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are considered to have been made in the United States, and are not subject to declaration, entry or duty. Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are no longer subject to any vessel repair duties. Even in the absence of any liability for duty, it is still required that all repairs and purchases, including those made in Canada, Mexico, and Israel, be declared and entered.

(b) *Applicability to specific types of vessels.*—(1) *Fishing vessels.* As provided in § 4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties and must file a declaration and entry, or their electronic equivalent, for covered foreign expenditures upon their first post-expenditure arrival in the United States. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S., must also file and pay duty.

(2) *Government-owned or chartered vessels.* Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) *Vessels away continuously for two years or longer.* Vessels normally subject to the vessel repair statute, which remain continuously outside the U.S. for two years or longer, are liable for duty on any fish nets and netting purchased at any time during the entire

absence. Other than for nets and netting, such vessels are liable for duty only on those expenditures which are made during the first six months of a continuous absence of two years or more from the United States. The single exception to this rule applies to vessels designed and used primarily for transporting passengers and merchandise which specifically depart the United States in order to obtain repairs or to purchase equipment. These vessels remain fully liable for duty regardless of the duration of their absence from the United States. Even though some costs may not be dutiable, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or file a bond on Customs Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A bond of sufficient value to cover all potential duty on the foreign repairs and purchases which must be submitted at the port of arrival shall be forwarded by Customs at that port to the appropriate VRU port of entry, as defined in paragraph (g) of this section. The amount of the bond is within the discretion of Customs at the port of arrival since claims for reduction in duty liability are subject to the consideration of evidence by Customs. Customs officials at the port of arrival may consult the appropriate VRU port of entry or the staff of the Entry Procedures and Carriers Branch in Customs Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby the agency remains liable under the contract for payment of the duty, there must be a deposit or a bond filed in an amount adequate to cover the estimated duty.

(d) *Declaration required.* When a vessel subject to this section first arrives in the United States following a foreign voyage, the owner, master, or authorized agent must submit a vessel repair declaration on Customs Form 226, a dual-use form used both for declaration and entry purposes, or must transmit its electronic equivalent. The declaration must be ready for presentation in the event that a Customs officer boards the vessel. If no foreign repair-related expenses were incurred, that fact must be reported either on the declaration form or by approved electronic means. The Customs port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent shall immediately forward it to the appropriate VRU port of entry.

(e) *Entry required.* The owner, master, or authorized representative of the owner of any vessel subject to this section for which a positive declaration has been filed must submit a vessel repair entry on Customs Form 226 or transmit its electronic equivalent. The entry must show all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor. The entry submission must indicate whether it provides a complete or incomplete account of covered expenditures. The entry must be presented or electronically transmitted by the vessel operator to the appropriate VRU port of entry as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Duty refund or remission claims should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(f) *Time limit for submitting evidence of cost.* A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the appropriate VRU port of entry within 90 calendar days from the date of vessel arrival. That evidence must include either the final cost of repairs or, if the operator submits acceptable evidence that final cost information is not yet available, initial or interim cost estimates given prior to or after the work was authorized by the operator. The proper VRU port of entry may grant one 30-day extension of time to submit final cost evidence if a satisfactory written explanation of the need for an extension is received before the expiration of the original 90-day submission period. All extensions will be issued in writing. Inadequate, vague, or open-ended requests will not be granted. Questions as to whether an extension should be granted may be referred to the Entry Procedures and Carriers Branch in Customs Headquarters by the VRU ports of entry. Any request for an extension beyond a 30-day grant issued by a VRU must be submitted through that unit to the Entry Procedures and Carriers Branch, Customs Headquarters. In the event that all cost evidence is not furnished within the specified time limit, or is of doubtful authenticity, the VRU may refer the matter to the Customs Office of Investigations to begin procedures to obtain the needed evidence. That office may also investigate the reason for a failure to file or for an untimely submission. Unexplained or unjustified delays in providing Customs with sufficient information to properly determine duty may result in penalty action as specified in paragraph (j) of this section.

(g) *Location and jurisdiction of vessel repair unit ports of entry.* Vessel Repair Units (VRUs) are considered to be the ports of entry for vessel repair declarations and entries, and are located in New York, New York; New Orleans, Louisiana; and San Francisco, California. The New York unit processes vessel repair entries received from ports of arrival on the Great Lakes and the Atlantic Coast of the United States, north of, but not including, Norfolk, Virginia. The New Orleans unit processes vessel repair entries received from ports of arrival on the Atlantic Coast from Norfolk, Virginia, southward, and from all United States ports of arrival on the Gulf of Mexico including ports in Puerto Rico. The San Francisco unit processes vessel repair entries received from all ports of entry on the Pacific Coast including those in Alaska and Hawaii.

(h) *Justifications for refund or remission of duty.* Vessel repair duties may be refunded or remitted. Refunds relate to claims made under paragraph (a) of the vessel repair statute (19 U.S.C. 1466(a)), and remissions relate to claims made under paragraphs (d), (e) and (h) of the vessel repair statute (19 U.S.C. 1466(d), (e) and (h)).

(1) *Refund of duty.* Duty is refunded when it is determined that a foreign shipyard operation or expenditure is not considered to be a repair or purchase within the terms of the vessel repair statute, or as determined under judicial or administrative interpretations.

(2) *Remission of duty.* Duty is remitted under paragraph (d) of the vessel repair statute (19 U.S.C. 1466(d)) when it is determined that a foreign shipyard operation or expenditure involves any of the following:

(i) *Stress of weather or other casualty.* Duty will be remitted if good and sufficient evidence supports a finding that the vessel, while in the regular course of its voyage, was forced by stress of weather or other casualty, while outside the United States, to purchase equipment or make repairs

necessary to secure the safety and seaworthiness of the vessel in order to enable it to reach its port of destination in the United States. Only duty on the cost of the minimal repairs needed for safety and seaworthiness is subject to remission. For the purposes of this section, a ''casualty'' does not include any purchase or repair made necessary by ordinary wear and tear, but does include the failure of a part to function if it is proven that the specific part was repaired, serviced, or replaced in the United States immediately before the start of the voyage in question, and then failed within six months of that date.

(ii) *U.S. parts installed by regular crew or residents.* Duty will be remitted if equipment, parts of equipment, repair parts, or materials used on a vessel were manufactured or produced domestically and were purchased in the United States by the owner of the vessel. It is also required under the statute that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installation.

(iii) *Dunnage.* Duty will be remitted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(i) *General procedures for seeking refund or remission.*—(1) *Applications for relief.* Vessel repair duty will not be refunded or remitted unless an Application for Relief is filed with Customs; duty will not be refunded or remitted based merely on a duty refund or remission claim made at time of entry pursuant to paragraph (e) of this section. An Application for Relief is not required to be presented in any particular format, but if filed it must clearly present justification for granting relief. An Application must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in this section. The deadline for receipt of an Application and supporting evidence is 90 days from the date that the vessel first arrived in the United States following foreign operations. Applications must be addressed and submitted by the vessel operator to the appropriate VRU port of entry and will be decided in that unit. The VRUs may seek the advice of the Entry Procedures and Carriers Branch in Customs Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the minimal standards of an Application for Relief is received, the duty amount will be determined without regard to issues of refund or remission. Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e) of this section. The cost of items for which refund or remission is being sought must be segregated from the cost of the other items listed in the vessel repair entry;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were the minimum necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any other United States Government Agency regarding the operation of the vessel.

(2) *Additional evidence.* In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by a VRU, the Applicant will be notified of the right to protest any perceived excessive charge or exaction.

(3) *Administrative protest.* Following the determination of duty owing on a vessel repair entry, a protest may be filed as the only and final administrative appeal. The procedures and time limits applicable to protests filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter.

(j) *Penalties.*—(1) *Failure to report, enter, or pay duty.* It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and is recoverable from the owner (see § 162.72 of this chapter).

(2) *False declaration.* If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person shall be subject to the criminal penalties provided for in 18 U.S.C. 1001.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is revised to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151.

Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

Section 159.7 also issued under 19 U.S.C. 1557;

Section 159.22 also issued under 19 U.S.C. 1507;

Section 159.44 also issued under 15 U.S.C. 73, 74;

Section 159.46 also issued under 19 U.S.C. 1304;

Section 159.55 also issued under 19 U.S.C. 1558;

Section 159.57 also issued under 19 U.S.C. 1516.

§ 159.11 [Amended]

2. It is proposed to amend § 159.11(b) by removing the phrase, ''vessel repair entries or''.

Approved: March 12, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–9946 Filed 4–20–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. 1999–4985, Notice No. 3]

Surface Transportation Board

49 CFR Part 1106

[STB Ex Parte No. 574]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCIES: Federal Railroad Administration, DOT, Surface Transportation Board.

ACTION: Notice of proposed rulemaking; date and location of public hearing; extension of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on December 31, 1998 (63 FR 72225), the Federal Railroad Administration (FRA) and the Surface Transportation Board (STB or Board) proposed a joint rule establishing procedures for developing and implementing safety integration plans by railroads proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. In that notice, the agencies announced that they did not intend to convene a public hearing on the rulemaking action, but invited interested persons to request a public hearing to enable them to comment on issues addressed in the NPRM. One commenter timely filed a request for a public hearing, and pursuant to that request, FRA and the Board have agreed to convene a public hearing as an opportunity for oral comment. Consistent with this decision, FRA and the STB also will extend the comment period to the date of the public hearing to solicit additional written comments on the respective proposed rules. The agencies request interested persons not to re-submit comments or arguments advanced during the first comment period.

DATES: Comments: Submit written comments on or before May 4, 1999.

Public Hearing: The public hearing will be held on Tuesday, May 4, 1999, beginning at 9:00 a.m., in Washington, DC Any person wishing to participate in the public hearing should notify *both* the FRA Docket Clerk ((202) 493–6030 or by mail) and the STB Secretary ((202) 565–1650 or by mail) at least five working days before the date of the hearing, and submit 10 copies of the oral statement that he or she intends to make at the hearing. The notification should identify the party the person represents and the particular subject(s) the person plans to address. The notification should also provide the FRA Docket Clerk and the STB Secretary with the participant's mailing address. FRA and the Board reserve the right to limit participation in the hearing by persons who fail to provide such notification.

ADDRESSES: (1) *FRA Docket Clerk:* Submit one copy of the notification identifying the docket number to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590. All docket material on the FRA rule will be available for inspection at this address and on the Internet at http://dms.dot.gov. (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

(2) *The STB Secretary:* Send an original and 10 paper copies referring to STB Ex Parte No. 574 to Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, NW, Washington DC 20423. In addition to paper copies, each party must also submit its respective notification and pleadings to the Board on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All such pleadings will be posted on the Board's website (http://www.stb.dot.gov).

(3) *Public Hearing:* The venue for the public hearing scheduled for May 4, 1999, will be at the Nassif Building, 400 Seventh Street, S.W., Room 2230, in Washington DC.

(4) *Written Comments:* The procedures for filing written comments with FRA and the Board are the same as provided in the NPRM published on December 31, 1998. 63 FR 72225 (December 31, 1998).

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mailstop 10, Washington, DC 20590 (telephone: (202) 493–6053); or Evelyn G. Kitay, Office of the General Counsel, STB, 1925 K Street, NW, Washington, DC 20423 (telephone: (202) 565–1563) [TDD for the hearing impaired: (202) 565–1695.].

Issued in Washington, DC, on April 12, 1999.

Jolene Molitoris,

Federal Railroad Administrator.

Decided: April 7, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–9798 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 64, No. 76
Wednesday, April 21, 1999

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

Analysis of Veteran/Boulder Project Area; Black Hills National Forest; Spearfish/Nemo Ranger District; Lawrence and Meade Counties, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare draft supplement to final environmental impact statement.

SUMMARY: Pursuant to 36 CFR 219.10(g), the District Ranger of the Spearfish/Nemo Ranger District, Black Hills National Forest, gives notice of the agency's intent to prepare a draft supplement to the Veteran/Boulder Project Area Final Environmental Impact Statement. The responsible official for this project is John C. Twiss, Forest Supervisor, Black Hills National Forest.

ADDRESSES: Send written comments to District Ranger, Spearfish/Nemo Ranger District, Black Hills National Forest, 2014 N. Main Street, Spearfish, SD 57783.

DATES: This project schedule is as follows: File Draft Supplement to Final Environmental Impact Statement—June 1999. File Final Supplement to Final Environmental Impact Statement and Record of Decision signature—September 1999.

FOR FURTHER INFORMATION CONTACT: Joy Trowbridge, Project Interdisciplinary Team Leader, 605–642–4622. Additional information, such as maps, can be obtained by written request to the Spearfish Ranger District office, or by phone at the above address and phone number.

SUPPLEMENTARY INFORMATION: The Veteran/Boulder Project Area Final Environmental Impact Statement (FEIS) was completed in September 1998 and a Notice of Availability was published in the **Federal Register** on October 16, 1998 (EIS number 980410). The FEIS describes alternatives for timber harvest and associated activities with the Veteran/Boulder Project Area (27,463 acres) on the Black Hills National Forest. The Project Area contains the majority of the 5,109 acre Beaver Park RARE II inventoried roadless area. On September 30, 1998 a Record of Decision was signed by Forest Supervisor John C. Twiss allowing timber harvest and associated activities within the Veteran/Boulder project area, except for the roadless area, on which a separate decision was to be made. On March 1, 1999, Supervisor Twiss signed a second Record of Decision allowing timber harvest and associated activities, except road construction, within the Beaver Park roadless area.

Significant issues described in the FEIS include wildlife habitat and vegetative diversity, the Beaver Park roadless area, mountain pine beetle infestation and forest health, timber harvest, roads and travel management, and prescribed burns and fuels. These issues were addressed through development of alternatives and/or mitigation, or through the disclosure of environmental effects.

Since the FEIS was published, the Forest has acquired new information concerning Forest health in the Beaver Park area, relating to the existing infestation of mountain pine beetles. The FEIS analyzed mountain pine beetle data and field reconnaissance information in the project area from 1997 to early 1998. Since that time, an aerial flight and related report from the Forest Service's Forest Health Management unit has indicated the beetles have spread beyond the areas analyzed in the FEIS and are approaching epidemic levels in the Beaver Park Area.

In addition to the increased insect activity, an early winter storm in October 1998 resulted in several areas of severely damaged and blown down trees within the southern third of Beaver Park.

Given this new information, the Forest has decided to further analyze the potential consequences of continued beetle activity within the southern half of Beaver Park (Management Areas 4.1, Limited Motorized Use and Forest Products; and 5.4, Big Game Winter Range). Timer management has already been approved in this portion of Beaver Park under the March 1, 1999 Record of Decision. The proposed supplement to the FEIS would analyze additional treatments within this area in order to slow further spread of the beetles, reduce damage to wildlife habitat and green trees, and reduce wildfire risk.

The proposed action is to salvage approximately 400 to 600 thousand board feet of trees either infested with mountain pine beetles or severely damaged in the October 1998 storm, from a total of approximately 200 to 300 acres within Management Areas 4.1 and 5.4 (Forbes Gulch) of Beaver Park. Treatments would consist of small (one quarter of an acre to 20 acres) clearcuts to remove beetle-infested trees as well as removal of downed and snapped off trees killed by the storm. NO new roads would be constructed and no additional road work would be needed on existing roads. Access would be from existing roads with forwarder machines and skidders. Sufficient dead and down trees would be left to meet Forest Plan standards for wildlife habitat and soil conditions (snags and down woody material).

Alternatives to the proposed action being considered at this time include no action, helicopter removal of infested trees, and removal of green wood in addition to beetle-infested trees.

The decision to be made is whether or not to remove infested and storm-damaged trees from the southern portion of Beaver Park (Forbes Gulch) in order to slow the mountain pine beetle epidemic, reduce wildfire risk, and protect wildlife habitat and other forest resources.

The comment period on the draft supplement to the FEIS will be a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

In addition to the proposed supplement to the FEIS, the Forest is also planning to do a wider analysis of the mountain pine beetle epidemic over a larger area, including the northern half of Beaver Park. Therefore, this supplement will only address the southern portion of Beaver Park, in order to more expediently address the beetle situation in this area.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft environmental impact statements (or draft supplements to an EIS) must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement (or draft supplement to an EIS) stage but that are not raised until after completion of the final environmental impact statement (or final supplement to an EIS) may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement (or draft supplement to an EIS) should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement (or draft supplement to an EIS) or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 8, 1999.

John Twiss,

Forest Supervisor.

[FR Doc. 99–9964 Filed 4–20–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Services Center Coastal Management Survey.

Agency Form Number(s): N/A.

OMB Approval Number: 0648–0308.

Type of Request: Revision of a currently approved collection.

Burden: 27 hours.

Number of Respondents: Approximately 80.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The mission of the NOAA Coastal Services Center is to foster and sustain the environmental and economic well being of the coast by linking people, information, and technology. NOAA is seeking approval to conduct a customer survey. The purpose of the survey is to assess the coastal resource management community's information needs. The results will allow the Center to determine the kinds of services its customers want, to understand the customer's level of technical expertise, and to document priority issues most relevant to the missions. This information will be used to guide the development of future products and services in the formats and software commonly used by customers.

Affected Public: State, local or tribal government, federal government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–9932 Filed 4–20–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: India and Pakistan Sanctions.

Agency Form Number: BXA 748–P.

OMB Approval Number: 0694–0111.

Type of Request: Extension of a currently approved collection of information.

Burden: 52 hours.

Average Time Per Response: 40 to 45 minutes per response.

Number of Respondents: 57 respondents.

Needs and Uses: Consistent with the President's directive, the Bureau of Export Administration (BXA) is imposing certain sanctions, as well as certain supplementary measures to enhance the sanctions. This section includes a new license review policy of denial for the export and reexport of most items controlled for nuclear proliferation (NP) reasons or missile technology (MT) reasons to all end-users in India and Pakistan. Items controlled on the Commerce Control List for nuclear and missile technology reasons have been made subject to this sanction policy because of their significance for nuclear explosive purposes and for delivery of nuclear devices.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202)395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: April 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–9933 Filed 4–20–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041399A]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Tilefish Committee, Tilefish Technical Committee, and Industry Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Thursday, May 6, 1999, from 10:00 a.m. until 4:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss and recommend management option alternatives for the public hearing draft of the Tilefish Fishery Management Plan.

Although other issues not contained in this agenda may come before the Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 15, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9988 Filed 4–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041399C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Marine Reserve Committee will hold a meeting which is open to the public.

DATES: The meeting will begin on Tuesday, May 11 at 8 a.m. and will continue through 5 p.m. Wednesday, May 12. The Tuesday session may go into the evening until business for the day is completed. The Thursday session will begin at 8 a.m. An opportunity for public comment will be provided on Wednesday.

ADDRESSES: The meeting will be held in the Multnomah Falls Room of the Doubletree Hotel Downtown, 310 SW Lincoln Avenue, Portland OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Economic Analysis Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to identify objectives for marine reserve options to be presented to the Council. Based on the objectives, the committee may begin work on design characteristics. The first day of the meeting will be taken up largely by technical presentations. This meeting is an early step in the first phase of a two-phase process for Council consideration of marine reserves. The first phase involves the conceptual evaluation of marine reserves as a tool for Council management and will culminate with a Council decision on whether or not to develop site-specific fully specified proposals for marine reserves.

Although other issues not contained in this agenda may come before the committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of formal committee action during this meeting. Committee action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 15, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–9989 Filed 4–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041499E]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to modify scientific research/enhancement permits (895, 900, 946, 1094, 1114, 1193); issuance of permits (1187, 1197); and modifications to existing permits (1115, 1116).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received applications for modifications to existing permits from: U.S. Army Corps of Engineers in Walla Walla, WA (Corps) (895), Fish Ecology Division, NMFS Northwest Fisheries Science Center, in Seattle, WA (NWFSC) (900, 946), Washington Department of Fish and Wildlife in Olympia, WA (WDFW) (1094, 1114), and Fish Passage Center in Portland, OR (FPC) (1193); NMFS has issued permits to Mr. Stephen M. H. Connett, of St. George's School (SC-SGS) (1187) and Mr. John Crutchfield, of Harris Energy & Environmental Center (JH-HEEC) (1197); and NMFS has issued modifications to scientific research permits to Chelan County Public Utility District No. 1 (PUD-CC) (1115) and Public Utility District No. 1 of Douglas County (PUD-DC) (1116).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before May 21, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 895, 900, 946, 1094, 1114, 1115, 1116, 1193: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permits 1187, 1197: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 895, 900, 946, 1193: Leslie Schaeffer, Portland, OR (503–230–5433).

For permit 1094: Robert Koch, Portland, OR (503–230–5424).

For permits 1114, 1115, 1116: Tom Lichatowich, Portland, OR (503–230–5438).

For permits 1187, 1197: Terri Jordan, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Loggerhead turtle (*Caretta caretta*).

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): Snake River (SnR) fall, SnR spring/summer, Upper Columbia River (UCR) spring

Sockeye salmon (*Oncorhynchus nerka*): SnR

Steelhead trout (*Oncorhynchus mykiss*): UCR

Shortnose sturgeon (*Acipenser brevirostrum*).

Modification Requests Received

The Corps requests modification 6 to enhancement permit 895. Permit 895 authorizes the Corps annual direct takes of juvenile, endangered, SnR sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of the juvenile fish transportation program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest. Permit 895 also authorizes the Corps annual incidental takes of ESA-listed adult salmonids associated with fallbacks through the juvenile fish bypass systems at the four dams. For modification 6, the Corps requests annual direct takes of juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon. ESA-listed juvenile fish are proposed to be captured, transported past the dams, and released to aid their outmigration to the Pacific Ocean. ESA-listed juvenile fish indirect mortalities are also requested. Modification 6 is requested to be valid for the duration of the permit, which expires on December 31, 1999.

NWFSC requests modification 7 to scientific research permit 900. Permit 900 authorizes NWFSC annual direct takes of juvenile, endangered, SnR sockeye salmon; juvenile, threatened, SnR fall chinook salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with studies designed to determine the relative survival of migrating juvenile salmonids at hydropower dams and reservoirs on the Snake and Columbia Rivers in the Pacific Northwest. For modification 7, NWFSC proposes an increase in the annual take of ESA-listed juvenile fish associated with The Dalles Dam survival study. An increased annual take of ESA-listed juvenile fish is requested to validate previously collected survival data at 64 percent and 30 percent spill volume scenarios at The Dalles Dam. ESA-listed juvenile fish are proposed to be captured at John Day Dam on the Columbia River. The fish are proposed to be handled and released or tagged with passive integrated transponders, transported to The Dalles Dam, held for up to 24 hours, and released. Also for modification 7, NWFSC requests annual takes of juvenile, endangered, naturally produced and artificially propagated UCR spring chinook salmon associated with the research. An associated increase in ESA-listed juvenile fish indirect mortalities is also requested. Modification 7 is requested to be valid for the duration of the permit, which expires on December 31, 1999.

NWFSC requests modification 6 to scientific research permit 946. Permit 946 authorizes NWFSC annual direct takes of juvenile, endangered, SnR sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a study designed to assess the migration timing and relative survival of transported and inriver juvenile chinook salmon migrating volitionally from Bonneville Dam to the mouth of the Columbia River. For modification 6, NWFSC requests an increase in the take of ESA-listed juvenile fish due to improvements in sampling equipment that are designed to speed passage of fish through a passive PIT tag detection system and reduce potential impacts from passage through the apparatus. Increased take is also requested due to the revised estimate for the number of fish thought to be available in the estuary in 1999. Also for modification 6, NWFSC requests annual takes of juvenile, endangered, naturally produced and artificially propagated UCR spring chinook salmon associated with the research. An associated

increase in ESA-listed juvenile fish indirect mortalities is also requested. Modification 6 is requested to be valid for the duration of the permit, which expires on December 31, 1999.

WDFW requests modification 2 to research/enhancement permit 1094. Permit 1094 authorizes WDFW annual direct takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a hatchery supplementation program in the mid- to upper Columbia River Basin. Incidental takes of ESA-listed species resulting from WDFW hatchery operations and hatchery produced fish releases are also authorized by the permit. For modification 2, WDFW requests annual takes of ESA-listed adult steelhead associated with a radio tagging study. The purpose of the study is to evaluate the ladder passage and fallback rates of adult steelhead at Priest Rapids, Wanapum, Rock Island, Rocky Reach, and Wells Dams on the mid-Columbia River. The goal of the study is to assure that safe passage conditions are being provided for returning ESA-listed adult fish at the dams. ESA-listed adult steelhead are proposed to be captured at Priest Rapids Dam, tagged with radiotransmitters, released, and tracked electronically as they migrate upstream. Grant Public Utility District (PUD), Chelan PUD, and Douglas PUD are requested to act as agents of WDFW in tracking the ESA-listed adult fish upstream. ESA-listed adult fish indirect mortalities are also requested. Modification 2 is requested to be valid for the duration of the permit, which expires on May 31, 2003.

WDFW requests modification 3 to scientific research permit 1114. Permit 1114 authorizes WDFW annual direct takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a smolt monitoring program at Rock Island Dam on the Columbia River in WA. For modification 3, WDFW requests an increase in the annual take of ESA-listed adult and juvenile steelhead associated with a new study to be conducted in the Hanford Reach of the Columbia River. Information from the study will be used to verify the spawning regime and exact stock of steelhead in the Hanford Reach to aid in developing future recovery plans for that section of the Columbia River. Adult steelhead are proposed to be captured by angling, sampled for biological data, fin clipped, and released. Eggs and alevin steelhead are proposed to be collected by excavating redds and sacrificed for genetic analysis. Steelhead fry are proposed to be collected with seines, sampled for biological data, fin clipped to obtain tissue samples, and released. ESA-listed juvenile steelhead indirect mortalities are also requested. Modification 3 is requested to be valid for the duration of the permit, which expires on December 31, 2002.

FPC requests modification 1 to scientific research permit 1193. Permit 1193 authorizes FPC annual direct takes of juvenile, endangered, SnR sockeye salmon, juvenile, threatened, SnR fall chinook salmon, juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon, and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with FPC's Smolt Monitoring Program at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. For modification 1, FPC requests an increase in the annual take of juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon. An increased annual take is requested because a larger than anticipated outmigration run of this ESA-listed species is estimated in 1999. ESA-listed juvenile fish are proposed to be captured, handled (examined and/or tagged with passive integrated transponders), and released. An associated increase in ESA-listed juvenile fish indirect mortalities is also requested. Modification 1 is requested to be valid for the duration of the permit, which expires on December 31, 2003.

Permits and Modifications Issued

Notice was published on February 4, 1999 (64 FR 5640), that an application had been filed by PUD-CC, for Modification 2 to permit 1115. Permit 1115 authorizes a take of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with research. For Modification 2, PUD-CC is authorized an increase in annual takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with three new proposed studies. PUD-CC will: (1) use new acoustic tagging technology to monitor the behavior of juvenile salmonids, (2) Use PIT and radio tagging technology to study the survival of juvenile salmonids, and (3) determine the number of adult salmonids that may be present in the Lake Chelan bypass reach after spill at the Lake Chelan hydroelectric project is curtailed. Modification 2 was issued on April 14, 1999, and is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on February 4, 1999 (64 FR 5640), that an application had been filed by PUD-DC for Modification 2 to permit 1116. Permit 1116 authorizes annual takes of juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with research studies. For Modification 2 PUD-DC is authorized an increase in takes of juvenile, endangered, naturally produced and artificially propagated, UCR steelhead for two new research studies. PUD-DC will use passive integrated transponder (PIT) tag technology to assess the survival of juvenile salmonids and will evaluate the relative benefits of PIT and radio tag technology. Modification 2 was issued on April 12, 1999, and is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on December 1, 1998 (63 FR 66125), that SC-SGS had applied for a 5-year scientific research permit (1187) to take up to 200 loggerhead, 300 green, 200 hawksbill, 5 leatherback, and 5 Kemp's ridley sea turtles annually from the Northwest Atlantic Ocean. The purpose of this research is to obtain life history data on all turtles captured, and to determine migratory behavior and habitat utilization of juvenile turtles captured on foraging grounds. Turtles will be captured by hand and/or dip net, weighed, measured, flipper tagged, tissue sampled and released at the site of capture. This is a continuation of work permitted under scientific research permit 886 which expired on December 31, 1998. Permit 1187 was issued on April 2, 1999, and expires on December 31, 2003.

Notice was published on February 4, 1999 (64 FR 5030), that JC-HEEC had applied for a 3-year research permit (1197) to take endangered shortnose sturgeon while conducting original research regarding the population of fishes in the Pee Dee River, NC. The Pee Dee River has been historically included in the shortnose sturgeon's native range. The applicant will be performing a baseline assessments of the resident and migratory fish species inhabiting the river below the Blewett Hydroelectric Plant. To ensure compliance with the ESA, the applicant requests a permit to capture, handle and release shortnose sturgeon that may be taken during this study. Permit 1197 was issued on April 5, 1999, and expires January 31, 2002.

Dated: April 15, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–9987 Filed 4–20–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Seventh Renewal

The Commodity Futures Trading Commission has determined to renew for a period of two years its advisory committee designated as the ''Commodity Futures Trading Commission Financial Products Advisory Committee.'' As required by Section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Financial Products Advisory Committee are to conduct public meetings and submit reports and recommendations on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission.

Chairperson Brooksley Born serves as Chairperson and Designated Federal Official of the Financial Products Advisory Committee. The committee's membership will represent a cross-section of interested and affected persons and groups including representatives of newer institutional market participants, such as broker-dealers, pension sponsors, and investment companies; traditional market participants, such as futures commission merchants, commodity pool operators, and commodity trading advisors; federal financial markets oversight agencies; futures exchanges; the academic, legal and accounting communities; and other appropriate public participants.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Issued in Washington, DC on April 15, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–9941 Filed 4–20–99; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps State Formula Program Grants: North Dakota and South Dakota

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds for new and renewal grants; notice of availability of 1999 application guidelines.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of approximately $500,000 to support new and continuing national service programs in North Dakota and approximately $500,000 to support new and continuing national service programs in South Dakota. (CFDA #94.004).

DATES: To be considered, applications must be received by 3:30 p.m., Eastern Standard Time, Wednesday, June 30, 1999.

ADDRESSES: Applications must be submitted to the Corporation for National Service, 1201 New York Avenue NW, Box SND, Washington, D.C. 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION: For further information contact James Cooper, Corporation for National Service, 1201 New York Avenue, NW, Washington, D.C. 20525, phone (202) 606–5000, ext. 149, TDD (202) 565–2799.

SUPPLEMENTARY INFORMATION: Application guidelines may be obtained by calling Rosa Harrison, Corporation for National Service, (202) 606–5000, ext. 433.

These funds are authorized under the National and Community Service Act of 1990, as amended, and represent the statute's population-based provision of program assistance formula funds that, in most cases, flow through approved state commissions on national and community service. Because neither North Dakota nor South Dakota currently maintains an approved state commission or alternative administrative entity, eligible entities may apply directly to the Corporation for formula funds. Local government agencies, institutions of higher education, public or private nonprofit organizations, and Indian Tribes in North Dakota and South Dakota are eligible entities. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible for these funds.

Requirements relating to this assistance are published at 45 CFR Parts 2510 *et seq.* and are further described in the application guidelines. The Corporation will also provide *Principles for High Quality National Service Programs*, which includes program examples, upon request.

Organizations interested in applying for these program funds may participate in one of two conference calls to be held on April 29, 1999 and May 20, 1999, respectively, during which Corporation staff will provide technical assistance to potential applicants. The calls will begin at 1:00 p.m. and conclude at 3:00 p.m. (E.D.T.). To register for either call, please contact Rosa Harrison, at (202) 606–5000, ext. 433. Upon registration, you will be apprised of the applicable 800 number needed for participation.

The provision of these grants is subject to the availability of appropriated funds.

Dated: April 15, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–9992 Filed 4–20–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Low Observable Strategic Vision Assessment Panel will meet in Rosslyn, VA on July 27–29, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–9972 Filed 4–20–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Low Observable Strategic Vision Assessment Panel will meet in Rosslyn, VA on August 10–12, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b (c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–9973 Filed 4–20–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Low Observable Strategic Vision Assessment Panel will meet in Rosslyn, VA on September 8–10, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b (c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–9974 Filed 4–20–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Low Observable Strategic Vision Assessment Panel will meet in Rosslyn, VA on July 7–9, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–9975 Filed 4–20–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Low Observable Strategic Vision Assessment Panel will meet in Rosslyn, VA on August 24–26, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–9976 Filed 4–20–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Low Observable Strategic Vision Assessment Panel in support of the HQ USAF Scientific Advisory Board will meet in Rosslyn, VA on September 28–30, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings in support of the Scientific Advisory Board.

The meeting will be closed to the public in accordance with Section 552b (c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–9977 Filed 4–20–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice Inviting Applicants To Serve as Field Readers for the Community Technology Centers Program

SUMMARY: The Office of Vocational and Adult Education (OVAE) invites interested individuals to apply to serve as field readers evaluating grant applications for the Community Technology Centers Program. The Community Technology Centers Program is intended to increase access to information technology and related services for adults and children in economically distressed low-income urban and rural communities through grants to establish or expand community technology centers.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable selection criteria. Each field reader will serve for a period of approximately 5 days. Each field reader who is selected will receive compensation for certain travel expenses and an honorarium.

Field Reader Qualifications: The Department is seeking experienced and knowledgeable professionals who are current with issues regarding the provision of computers and technology to residents of low-income urban and rural communities. These professionals should be familiar with issues dealing with the start-up and expansion of community technology centers; use of technology in adult, elementary or secondary education programs; technology and technology management; or community development and outreach to residents of low-income communities. Prospective field readers may include technology providers, administrators, and experts; individuals with experience in use of technology in elementary, secondary or adult education; individuals from State agencies, elementary and secondary education, institutions of higher education, and community-based organizations and agencies; and individuals with experience in providing access to technology in low-income communities. Each field reader must have the expertise necessary to accurately assess an applicant's showing on the applicable selection criteria.

Application Process: Any individual interested in serving as a field reader should mail or fax two copies of his or her resume to the address listed below indicating the program in which they are interested in serving as a field reader. Resumes should not exceed two pages and should include a Social

Security Number and an e-mail address, if available.

FOR FURTHER INFORMATION CONTACT: Community Technology Centers Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, Washington, DC 20202–7240. Inquiries may be sent by e-mail to frances__littlejohn@ed.gov or by Fax to: (202) 205–8973. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader program with search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 6832.

Dated: April 16, 1999.

Patricia W. McNeil,

Assistant Secretary, Vocational and Adult Education.

[FR Doc. 99–9979 Filed 4–20–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 6, 1999, 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation on sampling protocols and quality assurance audit of the program.
2. Final approval of the Request for Proposals for technical services—Community Radiation (COMRAD) Monitoring Program.
3. Continued discussion on low-level waste disposition issues.
4. Other Board business may be conducted as necessary.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9:00 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on April 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9952 Filed 4–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces a teleconference of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

The purpose of the teleconference is for members of two of the Board's subcommittees (the Openness Advisory Panel and the External Members of the Laboratory Operations Board) to discuss their review of the Department's policies and practices related to foreign visitors.

DATES AND TIME: Thursday, April 29, 1999, 11:00 AM–12:30 PM, EST.

ADDRESSES: Members of the public may participate by dialing 1–301–903–6495. Public participation is welcomed, however, the number of teleconference lines is limited and available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Bruce Bornfleth, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4040 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act. The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. On April 29, members from two of the Board's subcommittees will conduct a teleconference to discuss the Department's policies and practices related to foreign visitors.

Purpose of the SEAB Review of the Foreign Visitors Program

In March 1999, the Secretary of Energy directed the Board to review and provide advice, information, and recommendations on the Department's policies and practices related to foreign visitors.

Tentative Agenda

Thursday, April 29, 1999

11:00 AM–11:10 AM
Welcome and Opening Remarks—SEAB Chairman Andrew Athy

11:10 AM–11:30 AM
Overview of DOE's Foreign Visitors Program

11:30 PM–12:00 PM Public Comment Period

12:00 AM–12:30 PM
Board Comments and Action Plan—SEAB Chairman Andrew Athy

12:30 PM
Adjourn

This tentative agenda is subject to change.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the teleconference in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its teleconference, the Board welcomes public comment. Members of the public will be heard during the public comment period. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

Minutes and a transcript of the teleconference will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on April 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9955 Filed 4–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces a teleconference of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**. The purpose of the teleconference is for members of two of the Board's subcommittees (the Openness Advisory Panel and the External Members of the Laboratory Operations Board) to discuss their review of the Department's policies and practices related to foreign visitors.

DATES: Tuesday, May 4, 1999, 8:30 AM—4:30 PM, EST.

ADDRESSES: U.S. Department of Energy, Program Review Center (Rm 8E–089), Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585.

Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible) to expedite their entry to the Forrestal Building on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Bruce Bornfleth, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4040 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act. The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. On May 4, selected members from two of the Board's subcommittees will conduct a second and final meeting to discuss the Department's policies and practices related to foreign visitors.

Purpose of the SEAB Review of the Foreign Visitors Program

In March 1999, the Secretary of Energy directed the Board to review and provide advice, information, and recommendations on the Department's policies and practices related to foreign visitors.

Tentative Agenda

Tuesday, May 4, 1999

8:30 AM–9:00 AM
Welcome and Opening Remarks—SEAB Chairman Andrew Athy

9:00 AM–12:00 PM
Presentations and Discussions of Program Offices' Laboratory Foreign Visitors Programs—TBD

12:00 PM–1:00 PM
Lunch Break

1:00 PM–4:00 PM
Board Review, Comments and Actions—SEAB Chairman Andrew Athy

4:00 PM–4:30 PM
Public Comment Period

4:30 PM
Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

Minutes and a transcript of the teleconference will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on April 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9956 Filed 4–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces a teleconference of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**. The purpose of the teleconference is for the Board to discuss their findings and recommendations related to the Department's policies and practices for foreign visitors.

DATES: Wednesday, May 12, 1999, 11:00 AM–12:30 PM, EST.

ADDRESSES: Members of the public can participate by dialing 1–301–903–7073. Public participation is welcomed, however, the number of teleconference lines is limited and available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Bruce Bornfleth, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4040 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act. The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. On May 12, the Board will conduct a teleconference to discuss the Board's findings and recommendations on the Department's policies and practices related to foreign visitors.

Purpose of the SEAB Review of the Foreign Visitors Program

In March 1999, the Secretary of Energy directed the Board to review and provide advice, information, and recommendations on the Department's policies and practices related to foreign visitors.

Tentative Agenda

Wednesday, May 12, 1999

11:00 AM–11:10 AM

Welcome and Opening Remarks—SEAB Chairman Andrew Athy

11:10 AM–11:30 AM

Overview of findings and recommendations—Dr. John McTague

11:30 AM–12:00 PM

Public Comment Period

12:00 PM–12:30 PM

Board review, comments and action—SEAB Chairman Andrew Athy

12:30 PM

Adjourn

This tentative agenda is subject to change.

Public Participation

The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the teleconference in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its teleconference, the Board welcomes public comment. Members of the public will be heard during the public comment period. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Minutes

Minutes and a transcript of the teleconference will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on April 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–9957 Filed 4–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–582–000; FERC–582]

Proposed Information Collection and Request for Comments

April 15, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted by June 21, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–582 ''Electric Annual Charges'' (OMB No. 1902–0132) is used by the Commission to implement the statutory provisions of the Omnibus Budget Reconciliation Act of 1986, (Pub. L. 99–509) Title III, Subtitle E, Section 3401. Congress directed the Commission ''to assess and collect fees and annual charges in any fiscal year in amount equal to all of the costs incurred by the Commission in that fiscal year.'' The Commission implements a program of annual charges to be assessed against power marketing agencies, electric utilities and electric cooperatives. The Commission computes annual charges based on information of adjusted sales for resale and adjusted coordination of sales data. In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and subtracts all electric regulatory filing fee collections to determine total collectible electric regulatory program costs. The Commission then uses the data submitted under FERC–582 to determine the total volume of long-term

firm sales and transmission, and short-term sales and transmission and exchanges for all public utilities, including power marketers. The Commission divides these volumes into its collectible program costs to determine the unit charge per megawatt-hour for each category of sales. Finally, the Commission multiplies the sales volume in each category for each public utility by the relevant unit charge per megawatt-hour to determine the annual charges for public utilities, including power marketers. In addition the Commission uses company financial information filed under the waiver provisions to evaluate a company's request for a waiver, or exemption, of the obligation to pay a fee for an annual charge. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 381 Sections 381.108 and 381.302 and Part 382 Section 382.201(b).

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response hours	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
242	1	2	484

Estimated cost burden to respondents: 484 hours / 2,080 hours per year × $109,889 per year = $25,570. The cost per respondent = $106.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost of information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, 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 technologies collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–9917 Filed 4–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–583–000; FERC–583]

Proposed Information Collection and Request for Comments

April 15, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Micheal Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–583 ''Annual Kilowatt Generating Report (Annual Charges)'' (OMB No. 1902–0136) is used by the Commission to implement the statutory provisions of Section 10(e) of the Federal Power Act (FPA), Part I, 16 USC 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering Part I of the FPA and for the use of United States dams. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amount of annual charges to be assessed licensees for reimbursable government administrative costs and for use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR sections Part 11. *Action* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
660	1	2	1,320

Estimated cost burden to respondents: 1,320 hours/2,080 hours per year × $109,889 per year = $69,737. The cost per respondent = $106.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collection, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, 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 of other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9918 Filed 4–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–283–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 15, 1999.

Take notice that on April 12, 1999, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 248A, to become effective May 15, 1999.

Sabine states that the purpose of this filing is to modify the provisions of its FERC Gas Tariff to specify the types of discounts that are permissible and would not constitute a ''material deviation'' requiring individual agreements to be filed with FERC.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9916 Filed 4–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000 et al., CP97–319–000, CP98–200–00, CP98–540–000]

Independent Pipeline Company, ANR Pipeline Company, National Fuel Gas Supply Corporation, Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Independence Pipeline and Market Link Expansion Projects

April 15, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (draft EIS) on natural gas pipeline facilities proposed by ANR Pipeline Company (ANR), Independence Pipeline Company (Independence), National Fuel Gas Supply Corporation (National Fuel), and Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed projects, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives.

The draft EIS assesses the potential environmental effects of the construction and operation of the following facilities in Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New Jersey:

ANR

- About 72.3 miles of high pressure pipeline looping in three segments, consisting of about 42.4 miles of 42-inch-diameter pipeline, and about 29.9 miles of 30-inch-diameter pipeline;

• 15,000 horsepower (hp) of additional compression at one existing compressor station, and minor modifications to two existing stations; and

• Six new internal tool or ''pig'' launchers along the new pipeline loops.

Independence

• About 397.4 miles of 36-inch-diameter high pressure pipeline;

• 60,000 hp of compression at three new compressor stations;

• Three new meter stations;

• Six taps to local distribution companies; and

• 28 mainline valves along the pipeline.

National Fuel

• Abandon, primarily by removal, various segments of three existing pipelines within about 39.3 miles of right-of-way; and

• Minor modifications to remaining facilities along that section of right-of-way to maintain service to existing customers.

Transco

• About 154.3 miles of high-pressure pipeline looping, consisting of four segments totaling 63.2 miles of 36- and 42-inch-diameter pipeline in Pennsylvania, six segments totaling 84.8 miles of 36- and 42-inch-diameter pipeline in New Jersey, and 6.3 miles of 36-inch-diameter replacement in New Jersey;

• 62,400 hp of additional compression at three existing compressor stations, and replace impeller at one existing compressor station;

• Modification to three regulator stations; and

• One new pig launcher.

The purpose of the proposed projects would be to transport natural gas principally from expansion projects destined for the Chicago, Illinois area, to Leidy, Pennsylvania, and to markets in the eastern United States.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. Please carefully follow these instructions to ensure that your comments are received in time and are properly recorded:

• Reference Docket No. CP97–315–000 *et al.*;

• Send two copies of your comments to: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426; and

• Label one copy for the attention of the Environmental Review and Compliance Branch I, PR–11.1.

• Mail your comments so that they will be received in Washington, DC on or before June 4, 1999.

In addition to written copies, we will hold ten public meetings in the project area to receive comments on the draft EIS. All meetings will begin at 7:00 pm, and are scheduled as follows:

Crown Point, Indiana: May 24, 1999

Marion Education Center, St. Anthony's Hospital, 1201 South Main Street, Crown Point, Indiana, (219) 757–6398

Buchanan, Michigan: May 25, 1999

Buchanan High School Auditorium, 401 West Chicago Street, Buchanan, Michigan, (616) 695–8403

Tiffin, Ohio: May 24, 1999

Tiffin Columbian High School Auditorium, 300 South Monroe Street, Tiffin, OH, (419) 447–6331

Wooster, Ohio: May 25, 1999

Ohio Agriculture Research Development Center (Ohio State University), Fisher Auditorium, 1680 Madison Avenue, Wooster, Ohio, (330) 263–3738

North Canton, Ohio: May 24, 1999

Hoover High School, Hoover Hall, 575 7th St., NE, North Canton, Ohio, (330) 497–5600

Butler, Pennsylvania: May 25, 1999

Intermediate High School, Auditorium, 110 Campus Lane, Butler, Pennsylvania, (724) 287–8721

Ridgeway, Pennsylvania: May 24, 1999

Royal Inn, Boot Jack Road, Route 219 (South of Ridgeway), Ridgeway, Pennsylvania, (814) 773–3153

Williamsport, Pennsylvania: May 25, 1999

Sheraton Inn, 100 Pine Street, Williamsport, PA, (717) 327–8231

Phillipsburg, New Jersey: May 24, 1999

Holiday Inn, 1314 US Highway 22, Phillipsburg, New Jersey, (908) 454–9771

Hasbrouck Heights, New Jersey: May 25, 1999

Holiday Inn, 283 Route 17 South, Hasbrouck Heights, New Jersey, (202) 462–9600

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impact described in the draft EIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS as necessary, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

All intervenors and anyone providing written comments on the draft EIS will receive a copy of the final EIS. If you do not wish to comment on the draft EIS but wish to receive a copy of the final EIS, you must write to the Secretary of the Commission indicating this request. Individuals who do not indicate their desire to receive the final EIS will receive an Executive Summary. Agencies, elected officials, local governments, special interest groups, libraries, and media will receive a final EIS.

The draft EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, the draft EIS has been mailed to Federal, state, and local agencies; public interest groups; individuals who requested a copy of the draft EIS; affected landowners; libraries; newspapers; and parties to this proceeding.

Additional information about the proposed projects is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in these docket numbers. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders,

notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access the CIPS, the CIPS helpline can be reached at (202) 208–2474.

Lonwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–9912 Filed 4–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00267; FRL–6066–8]

Notice of Availability of Grants and Selection Criteria for PrintSTEP Pilots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of PrintSTEP grants.

SUMMARY: To support States implementing PrintSTEP project pilots, EPA plans to award three to five cooperative agreements of approximately $100K each. To be eligible for PrintSTEP grants, all projects should have an impact on regulating simultaneous air, water and hazardous waste releases of chemicals or mixtures covered by Toxic Substances Control Act (TSCA) from printing facilities.

DATES: The application must be submitted to EPA by close of business July 20, 1999. EPA anticipates awarding the cooperative agreements no later than September 30, 1999.

ADDRESSES: One original and four copies of the application must be submitted to: Gina Bushong (2224A), Office of Compliance, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gina Bushong (2224A), Office of Compliance, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 564–2242; e-mail address: bushong.gina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Printers Simplified Total Environmental Partnership (PrintSTEP) model program was developed by a diverse group of stakeholders as part of EPA's Common Sense Initiative (CSI). The PrintSTEP program, which States will pilot, is designed to result in a single-enforceable agreement that regulates a printing facility's releases of chemicals or mixtures covered by TSCA to the air, water, and hazardous waste streams all at once. The PrintSTEP design does not change the existing environmental emissions or release standards for the printing industry. Instead, it changes the process of implementing those standards to improve efficiency, simplify requirements, and improve environmental performance. Under the EPA budget, funds are available to support States wishing to pilot test an alternative system for regulating printing facilities.

PrintSTEP has been design to benefit State regulatory agencies, printers, and the community. The combined features of PrintSTEP create a system which integrates multiple interests and concerns, including a process that is transparent, business flexible, and reduces environmental impacts. Some of the PrintSTEP benefits to be evaluated under the State PrintSTEP pilot projects include: Reducing the time and resources spent on the administrative components of environmental regulation, providing a multimedia plain language approach to simplifying environmental requirements, providing early and meaningful public participation, enhancing environmental protection, and providing operational flexibility for printing facilities.

To assist in the implementation of PrintSTEP, three documents have been developed. The first is a State Guide to PrintSTEP which provides the States with what they need to know to implement a PrintSTEP pilot program for their printers. The second, the Plain Language Workbook provides printers with simplified tools to allow them to identify their regulatory requirements. The Workbook also includes pollution prevention information specific to the printing sector to help printers reduce their emissions. Finally, the Community Handbook, provides citizens an overview of environmental issues, background on the printing industry, and suggestions for working with printers as part of PrintSTEP.

It is strongly recommended that States requesting funding to pilot a PrintSTEP program become familiar with the three documents described above prior to submitting an application. Copies of these documents may be obtained from Gina Bushong at the address under ''FOR FURTHER INFORMATION CONTACT.''

II. Statutory Authority

The funding authority for making these cooperative agreements is section 28 of TSCA. The authority provides that ''the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this chapter for their prevention and elimination.'' This initiative addresses chemicals covered under TSCA and complements, but does not duplicate, the Administrator's actions under TSCA. These funds are being made available to States for priority needs not currently addressed by the Administrator under TSCA due to resource constraints.

III. Matching Requirements

States receiving TSCA section 28 grant funding are required to contribute a minimum of 25% of the project cost. The State may utilize in-kind services to satisfy this requirement consistent with 40 CFR 31.24.

IV. Eligibility

In accordance with TSCA, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any territory or possession of the United States. For convenience, the term ''State'' in this notice refers to all eligible applicants. Local governments, tribes, private universities, private nonprofit entities, private businesses, and individuals are not eligible.

V. Pre-Proposal Submission

A. Scope

The funding authority provides an avenue for supporting cross-media environmental projects such as PrintSTEP. Applicants for PrintSTEP pilot funding, should propose an approach addressing the significant components to be evaluated under the PrintSTEP pilot project. Potential applicants are strongly encouraged to obtain and review copies of the materials, discussed in Unit I. of this document, which have been developed for printers, communities and State regulators as part of the development of PrintSTEP prior to developing a pre-proposal. These materials may be obtained from the person listed under ''FOR FURTHER INFORMATION CONTACT.'' EPA will evaluate each application with regard to its applicability to the key principles in the PrintSTEP design. These key elements are outlined in the selection criteria section of this notice. Pre-proposals

should be no more than 15 pages in length. Pre-proposals should be as complete as possible since EPA may make selections for funding based on the pre-proposals without further consultations with the applicants.

B. Selection Criteria

Include:

1. *Delegation of program authority*. The pre-proposal should include a statement confirming that the applicant has the legal authority to implement the Federal program for each environmental media covered by their proposed PrintSTEP project. In the case where all media are not covered in the pre-proposal, an explanation should be provided for any omissions.

2. *Stakeholder involvement*. A plan for involvement of all stakeholder groups (industry, environmental and environmental justice groups, labor, regulators, etc.) in the design of the State PrintSTEP program should be submitted. If possible, letters of support from stakeholder groups should be included.

3. *Regulatory components/coordination*. A proposed design providing a modular, multimedia regulatory system for printers who volunteer for this pilot, including a process for coordination among various levels of government should be provided. The design should include:

i. Description of the regulatory program and requirements covered by the State's PrintSTEP program, including a discussion of which media programs are included and a discussion of how the level of regulatory requirements is directly related to the level of wastes generated.

ii. Description of how the program will cover new and/or existing printing facilities, including a process for printing facility modifications.

iii. Discussion of the type of printing facilities expected to be included in the State's PrintSTEP pilot program (facility size, printing process type etc.). The PrintSTEP pilots should only include printing facilities that wish to volunteer to be part of the project.

iv. Geographic location of proposed PrintSTEP pilot (targeting a pilot to a location where investigations are already underway to evaluate a community's cumulative pollution exposure will be judged favorably).

4. *Public involvement*. The key aspects of the program design to enhance public involvement should be described including:

i. A description of the proposed information repository for making printing facility information available to the public.

ii. Discussion of approaches to providing actual notice of printing facility permitting to the public.

iii. A proposed method for identifying the relevant community affected by a printing facility.

iv. Identification and discussion of any environmental justice concerns within the geographic area proposed for the pilot.

v. A method for providing technical assistance to the community.

5. *Printing facility support*. Information should include:

i. A discussion of technical assistance available to businesses seeking information about source reduction/pollution prevention opportunities.

ii. Efforts to provide compliance assistance targeted to small businesses.

6. *Evaluation*. The applicant must agree to work cooperatively with EPA, the PrintSTEP development team, and the other grantees to develop a final strategy for evaluating the PrintSTEP pilots. This will require participation in at least one meeting of all awardees and the PrintSTEP development team to be held in Washington, DC. A copy of the draft evaluation strategy template should be requested from the person listed under ''FOR FURTHER INFORMATION CONTACT.''

7. *Administrative components*—i. A proposed staffing plan for project.

ii. Compliance and enforcement program including a description of resources.

iii. A proposed schedule for implementing the pilot.

iv. A breakdown of costs should be provided (Note: States must provide a minimum of 25% of the total project costs).

v. Completed grant application forms. The Federal application forms may be obtained from the person listed under ''FOR FURTHER INFORMATION CONTACT.''

VI. Application Process

One original and four copies of the application must be submitted to EPA at the address under ''FOR FURTHER INFORMATION CONTACT,'' by close of business July 20, 1999. EPA anticipates awarding the cooperative agreements no later than September 30, 1999. All non-awarded applicants will be notified at that time. This solicitation is authorized under the information collection request, Office of Management and Budget (OMB) control number 2030–0020.

VII. Congressional Review Act

Under the Agency's current interpretation of the definition of a ''rule,'' grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). (The PrintSTEP program itself is not considered a rule.) The CRA, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Business and industry, Grants—environmental protection, Printing.

Dated: April 9, 1999.

Elaine Stanley,

Director, Office of Compliance.

[FR Doc. 99–10004 Filed 4–21–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00594; FRL 6075–8]

Notice of Availability of Pesticide Data Submitters List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

FOR FURTHER INFORMATION CONTACT: By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6426; e-mail: jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration. This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

II. Ordering Information

Microfiche copies of the document are available from the National Technical Information Service (NTIS) ATTN: Order Desk 5285 Port Royal Road Springfield, VA 22161. Telephone: 1–800–553–6847. When requesting a document from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publication for this version of the Pesticide Data Submitters List is PB 99–131963.

III. Electronic Access

The Pesticide Data Submitters List is available on EPA's World Wide Web (WWW) site on the Internet. The Internet address of EPA's web site is www.epa.gov.

To Access the Data Submitters List from the EPA Home Page, select ''Databases and Software.'' From the next page, select ''Media Specific.''

The Pesticide Data Submitters List may be found by searching for the keywords ''datasubmitterslist'' from the EPA Home Page, or may be accessed directly on the EPA web site, by going directly to the address listed below. Note that this address is case sensitive. http://www.epa.gov./opppmsd1/datasubmitterslist/index.html

List of Subjects

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

Dated: April 8, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–10002 Filed 4–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–AL; FRL–6072–1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Alabama's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On October 5, 1998, the State of Alabama submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Alabama's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Alabama has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Alabama.

DATES: Comments on the authorization application must be received on or before June 7, 1999. Public hearing requests must be received on or before May 5, 1999.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number ''PB–402404–AL'' (in duplicate) to: Environmental Protection Agency, Region IV, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303–3104.

Comments, data, and requests for a public hearing may also be submitted electronically to: beldin-quinones.john@epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: John A. Beldin-Quinones, Project Officer, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303–3104. Telephone: (404) 562–9171, e-mail address: beldin-quinones.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed

by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Alabama's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of Alabama's proposed program has been provided by the applicant:

The State of Alabama, through the Alabama Department of Public Health (ADPH) and Safe State of the University of Alabama, will implement and administer the lead-based paint training, accreditation, and certification program, based on authority provided by the Alabama Legislature during ratification of ''The Alabama Lead Reduction Act of 1997.''

The Alabama regulations are applicable to all persons engaged in lead-based paint activities in target housing and child-occupied facilities. The State certification program requirements include: accreditation of lead-based paint activities training providers and training courses; certification of firms and individuals (inspectors, risk assessors, supervisors, project designers, and abatement workers) conducting lead-based paint inspections, risk assessments, or abatement in target housing and child-occupied facilities; and required work practice standards for lead-based paint activities.

Additional requirements include: (1) Principal instructors and guest instructors teaching hands-on or work practice standards to successfully complete the training course to be taught; (2) training programs to notify Safe State of the University of Alabama prior to conducting a training course; and (3) training course accreditation to be contingent on completion of a satisfactory course audit.

Work practice standards required for lead-based paint activities are equivalent to standards in the Federal regulations, but also include filing a project notification in writing, with fees, prior to commencement of any lead-based paint abatement activity.

The State program provides for establishing reciprocity arrangements with other states and/or Indian Tribes with authorized programs, and provides for outreach activities to educate the public and the regulated community. Costs are supported by Federal grants as well as fees assessed for the certification of firms, accreditation of training programs and individuals, and the notification of projects.

Alabama's rules provide for the suspension and revocation or modification of training provider accreditations, training course accreditation, and firm and individual certifications.

III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB-402404-AL.'' Copies of this notice, the State of Alabama's authorization application, and all comments received on the application are available for inspection in the Region IV office, from 8 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA Region IV Library, Environmental Protection Agency, Atlanta Federal Center, 9th Floor, 61 Forsyth St., SW., Atlanta, GA.

Commenters are encouraged to structure their comments so as not to contain information for which Confidential Business Information (CBI) claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2.

Comments and information not claimed as CBI at the time of submission will be placed in the public record. Electronic comments can be sent directly to EPA at:

beldin-quinones.john@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–AL.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to

issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: April 7, 1999,

A. Stanley Meiburg,

Regional Administrator, Region IV.

[FR Doc. 99–10003 Filed 4–20–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 14, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0859.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local or tribal government.

Number of Respondents: 80.

Estimated Time per Response: 78.5 hours (avg).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,280 hours.

Total Annual Costs: None.

Needs and Uses: Section 253 of the Communications Act of 1934, as amended requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission issued a Public Notice that establishes guidelines relating to its consideration of preemption petitions. The Commission expects petitioners and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9900 Filed 4–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–474; Report No. AUC–99–24–B (Auction No. 24)]

Phase II 220 MHz Service Spectrum Auction; Notice and Filing Requirements for Auction of Phase II 220 MHz Service Spectrum Scheduled for June 8, 1999; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This is a summary of a Public Notice (DA 99–474) released on March 8, 1999, establishing minimum opening bids and procedures for the upcoming auction of Phase II 220 MHz Service Spectrum (Auction No. 24), in accordance with the Balanced Budget Act of 1997.

DATES: Auction No. 24 is scheduled to begin on June 8, 1999.

ADDRESSES: See the text of the Public Notice and attachments for information regarding important addresses.

FOR FURTHER INFORMATION CONTACT:

Media Contact: Meribeth McCarrick, (202) 418–0654.

Auctions Division: Ruby Hough, Operations; Bob Reagle, Auctions Analysis; or Anne Napoli, Legal, (202) 418–0660.

Commercial Wireless Division: Scott Mackoul, (202) 418–0620.

SUPPLEMENTARY INFORMATION: The complete text of this Public Notice, including nine attachments that do not appear in this summary, is available for inspection and copying Monday through Thursday from 9 a.m. to 4 p.m., and Friday from 9 a.m. to 2 p.m., in the Wireless Telecommunications Bureau's Public Reference Room (Room 5608), 2025 M Street, N.W., Washington, D.C. 20554, and on the Commission's World Wide Web page, located at: http://www.fcc.gov/wtb/auctions/auc24/auc24.html. Please note that the Wireless Telecommunications Bureau's Public Reference Room will cease operations at the M Street location on Monday, April 26, 1999, and will reopen on Monday, May 3, 1999 at the Commission's new headquarters, located at 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The nine attachments that do not appear in this summary, but are available as described above, are: Attachment A (Summary of Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids); Attachment B (List of Cases Pending Before the Commission Involving Non-Nationwide Phase I 220 MHz Licensees); Attachment C (Guidelines for Completing FCC Forms 175 and 159 and Exhibits); Attachment D (Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)); Attachment E (Electronic Filing and Review of FCC Form 175); Attachment F (Accessing the FCC Network Using Windows 95/98); Attachment G (FCC Remote Bidding Software Order Form); Attachment H (Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules); and Attachment I (Auction Seminar Registration Form).

Synopsis

I. Introduction

1. The Federal Communications Commission (''FCC'' or ''Commission'') will hold an auction of 225 licenses to operate in the 220–222 MHz band. This auction offers 216 100-kHz licenses in 87 Economic Areas (EAs), and nine 150-kHz licenses in four Economic Area Groups (EAGs) designated for the Phase II 220 MHz auction. The number of 100-kHz licenses available in each EA varies from one to five, while the number of 150-kHz licenses available in each EAG varies from two to three. No nationwide licenses are available in this auction. A list of each license that will be available in Auction No. 24, along with its upfront payment and minimum opening bid, is included in the full text of this Public Notice as Attachment A (see ''Supplementary Information,'' *supra*, for further details).

2. *Auction Date:* The auction will commence on June 8, 1999. The initial schedule for bidding will be announced by Public Notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

3. *Bidding Methodology:* Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically. Pre-Auction Dates and Deadlines:

- Auction Seminar: April 21, 1999.
- Short Form Application (FCC Form 175): May 10, 1999; 5:30 p.m. ET.
- Upfront Payments (via wire transfer): May 24, 1999; 6:00 p.m. ET.
- Orders for Remote Bidding Software: May 25, 1999.
- Mock Auction June 4, 1999.

Telephone Contacts:

- FCC National Call Center: (888) CALL–FCC ((888) 225–5322) or (717) 338–2888 (direct dial). For general auction information and seminar registration, press option #2 at the prompt. Hours: 8 a.m.–5:30 p.m. ET, Monday through Friday.
- FCC Technical Support Hotline: (202) 414–1250 (voice), (202) 414–1255 (text telephone (TTY)). Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday.

A. Background

4. In the *220 MHz Third Report and Order* (62 FR 15978, April 3, 1997), the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing, used in the Phase I 220 MHz Service, was replaced with a geographic-based system in the Phase II 220 MHz Service, which is the subject of the upcoming auction. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services (''CMRS''). The Commission developed three types of geographic area licenses for the Phase II 220 MHz Service. The first type of license was based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce (60 FR 13114, March 10, 1995). In addition, the Commission created three EA-type license areas to cover the following United States territories: American Samoa; the U.S. Virgin Islands and Puerto Rico; and Guam and the Northern Mariana Islands. The second type of license, known as Economic Area Groupings (EAGs), included 6 groups of EAs, which collectively encompassed all of the EA and EA-type licenses. Finally, the Commission designed three nationwide licenses, each of which encompassed all six EAGs. Service and operational requirements for the Phase II 220 MHz Service are contained in Part 90 of the Commission's Rules, 47 CFR Part 90.

Pursuant to the rules adopted in the *220 MHz Third Report and Order* (62 FR 15978, April 3, 1997) and the *220 MHz Memorandum Opinion and Order on Reconsideration* (63 FR 306611, June 12, 1998), the Commission commenced the auction of 908 Phase II 220 MHz licenses on September 15, 1998. This auction closed on October 22, 1998. Forty-four winning bidders won a total of 693 licenses. On November 24, 1998, the Bureau released a Public Notice (DA 98–2386) (63 FR 67685, December 12, 1998) (''Phase II 220 MHz Service Public Notice''), announcing that 225 licenses now available for auction will be included in Auction No. 24.

B. Due Diligence

5. Potential bidders are reminded that there are a number of incumbent Phase I 220 MHz licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's Rules. *See* 47 CFR 90.763. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide

service to certain areas in their geographic license areas.

6. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of a future agreement with Canada on the use of 220–222 MHz spectrum in the border area.

7. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions for reconsideration and applications for review are pending before the Commission that relate to particular incumbent non-nationwide 220 MHz licensees. In addition, the decisions reached in the 220 MHz proceeding are the subject of a judicial appeal and may be the subject of additional reconsideration or appeal. *See, e.g., PLMRS Narrowband Corp., et al.* v. *Federal Communications Commission,* No. 92–1432, (D.C. Cir., filed September 18, 1992). We note that resolution of these matters could have an impact on the availability of spectrum for EA and EAG licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

8. Potential bidders are solely responsible for investigating and evaluating the degree to which such pending matters may affect spectrum availability in areas where they seek EA or EAG licenses.

9. To aid potential bidders, Attachment B to this Public Notice lists matters pending before the Commission that relate to licenses or applications for the 220 MHz service. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 220–222 MHz band.

10. Parties may submit additions or corrections to the list, provided such additions or corrections are filed with the Commission within ten (10) business days from release of this Public Notice. Such submissions should be limited to identifying pleadings or papers previously filed with the Commission. No new pleadings or arguments on the merits will be accepted as explicitly provided by Commission Rules.

11. Corrections and additions must be filed with the Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. One copy of each submission should also be sent to International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, while an additional courtesy copy should be sent to Scott A. Mackoul, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4–A230, Washington, D.C. 20554. Parties filing additions or corrections should include the internal reference number of this Public Notice (DA 99–474) on their submissions. Parties are also reminded that some of the proceedings are restricted proceedings governed by the Commission's ex parte rules. Accordingly, any submission filed pursuant to this Public Notice that is directed to the merits or outcome of any restricted proceeding must be served on all parties to that restricted proceeding. *See generally* 47 CFR 1.1200–1.1216.

12. Additional information regarding matters identified in Attachment B is available to the public. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In a future Public Notice, the Bureau will provide the new location of the Commission's licensing database in the Portals building. In addition, copies of the pleadings are available for public inspection only in the Gettysburg Public Reference Room.

13. In addition, potential bidders may search for information (but not the pleadings) regarding incumbent 220 MHz licensees on the World Wide Web at http://www.fcc.gov/wtb. In particular, information can be accessed by downloading databases by selecting ''WTB Database Files'' (http://www.fcc.gov/wtb/databases.html), or searching on-line by selecting ''Search WTB Databases'' (http://gullfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.hts). Any telephone inquires regarding these matters should be directed to the Technical Support Hotline at (202) 414–1250 (V) or (202) 414–1255 (text telephone (TTY)).

14. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

C. Participation

15. Those wishing to participate in the auction must:

- Electronically submit a short form application (FCC Form 175) by May 10, 1999.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by May 24, 1999.
- Comply with all provisions outlined in the Bidder Information Package.

D. Prohibition of Collusion

16. To ensure the competitiveness and integrity of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 24, for example, the rule would apply to any applicants bidding for the same EA or EAG. Therefore, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c).

In addition, Section 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

E. Bidder Information Package

17. No Bidder Information Package will be provided for Auction No. 24. The Commission provided a Bidder Information Package for Auction No. 18, the initial auction of Phase II 220 MHz Service spectrum. Although the majority of the specific software and technical information contained therein is no longer applicable (*e.g.*, Tabs A through D), other information, including the auction rules and some (but not all) of the relevant rulemakings, can be found in Tab E of the Auction No. 18 Bidder Information Package. Upon request, the Commission will provide one free copy of that Bidder Information Package to each Auction No. 24 applicant. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to ''Federal Communications Commission'' or ''FCC.'' To place an order, contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option #2 at the prompt). Prospective bidders that have already contacted the FCC at this number expressing an interest in Auction No. 24 will receive a Bidder Information Package in approximately four weeks, and need not call again unless they wish to order additional copies. In addition, applicants may access updated information about Auction No. 24 at the following address on the Bureau's web site:

http://www.fcc.gov/wtb/auctions/auc24/auc24.html

Applicants are strongly encouraged to check this site regularly for complete information regarding Auction No. 24.

F. Relevant Authority

18. Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to the Phase II 220 MHz Service, contained in Title 47, Part 90 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *220 MHz Third Report and Order* (62 FR 15978, April 3, 1997); *220 MHz Memorandum Opinion and Order on Reconsideration* (63 FR 306611, June 12, 1998); *220 MHz Fourth Report and Order* (62 FR 46211, September 2, 1997); and *220 MHz Fifth Report and Order* (63 FR 49291, September 15, 1998). Potential bidders must also familiarize themselves with Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

19. The terms contained in the Commission's Rules, relevant orders, Public Notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our Public Notices or the bidder information package at any time, and will issue Public Notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all Public Notices pertaining to this auction. Copies of most Commission documents, including Public Notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 857–3800. When ordering documents from ITS, please provide the appropriate FCC number (*e.g.*, FCC 98–93 for the Memorandum Opinion and Order on Reconsideration and FCC 97–57 for the 220 MHz Second Report and Order).

20. Bidder Alerts: The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 22 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

22. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 22 may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

G. National Environmental Policy Act (NEPA) Requirements

23. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each wireless facility. *See* 47 CFR 1.1305–1.1319. These rules require that, among other things, licensees consult with expert agencies having NEPA responsibilities including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). Licensees must prepare environmental assessments for wireless facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or

endangered species or designated critical habitats, historical or archaeologic sites, Indian religious sites, floodplains, and surface features. Licensees must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

II. Eligibility

A. General Eligibility Criteria

24. For the Phase II 220 MHz Service, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in the auction, and in the provision of this and other commercial mobile radio services.

(1) Determination of Revenues

25. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling principals, and the affiliates of the applicant and its controlling principals. Therefore, the gross revenues of all of the above entities must be disclosed *separately and in the aggregate* as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling principals. The term ''controlling principal'' includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The person/entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The person/entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The person/entity plays an integral role in management decisions.

(2) Very Small or Small Business Consortia

26. A consortium of small businesses or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in Section 90.1021(b) (1) or (2). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling principals, and controlling principals' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for very small or small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(3) Application Showing

27. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a very small business or small business (or consortia of very small or small businesses) for this auction. Specifically, for the Phase II 220 MHz Service auction, applicants applying to bid as very small or small businesses (or consortia of very small or small businesses) will be required to file all information required under Sections 1.2105(a) and 1.2112(a) of the Commission's Rules. *See* 47 CFR 90.1009. In addition, these applicants must disclose, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (1) the applicant; (2) the applicant's affiliates; (3) the applicant's controlling principals; and (4) the affiliates of the applicant's controlling principals. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling principals, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying to bid as a consortium of very small or small businesses, this information must be provided for each consortium member.

B. Bidding Credits

28. Applicants that qualify under the definitions of very small business and small business (or consortia of very small or small businesses), as set forth in 47 CFR 90.1021(b), are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a Phase II 220 MHz Service bidding credit depends on the average gross revenues for the preceding three years of the bidder, its controlling principals, and the affiliates of both the bidder and its controlling principals:

- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for Phase II 220 MHz Service licenses; and,
- A bidder with average gross revenues of not more than $3 million for the preceding three years receives a 35 percent discount on its winning bids for Phase II 220 MHz Service licenses.

29. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Guidance on calculating gross revenues is contained in 47 CFR 90.1021(c).

30. Phase II 220 MHz Service bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, Phase II 220 MHz Service bidders should also note that there are no installment payment plans in the Phase II 220 MHz Service auction.

III. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due May 10, 1999, 5:30 p.m. ET

31. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on May 10, 1999. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.C., *infra.*

(1) Electronic Filing

32. As of January 1, 1999, applications to participate in FCC auctions must be filed electronically, unless it is not operationally feasible. Applicants will be permitted to file their FCC Form 175 applications in hard copy form only in the event the FCC experiences technical difficulties with its electronic systems. In such an event, the FCC will announce the procedure for submitting manual applications.

33. For Auction No. 24, applicants may file applications electronically beginning April 16, 1999. The system will generally be open for filing on a 24-hour basis. The filing window will remain open until 5:30 p.m. ET on May 10, 1999. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline of May 10, 1999. Information about installing and

running the FCC Form 175 application software will be included in a future Public Notice. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.–6 p.m. ET, Monday–Friday.

(2) Completion of the FCC Form 175

34. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice. Applicants should not consider their form submitted to the FCC until they press the ''Submit Form 175'' button on the ''Submit'' page and receive confirmation from the filing system that the form has been received by the Commission.

(3) Electronic Review of FCC Form 175

35. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a Public Notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is a fee of $2.30 per minute for accessing this system. For details, see Attachment E of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above).

B. Application Processing and Minor Corrections

36. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a Public Notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

37. As described more fully in the Commission's Rules, after the May 10, 1999, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant). *See* 47 CFR 1.2105.

C. Upfront Payments—Due May 24, 1999

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Applicants will have access to an electronic version of the FCC Form 159 (July 1997 version) after completing the electronic FCC Form 175. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6 p.m. ET on May 24, 1999.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 24 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 24, 1999 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Making Auction Payments by Wire Transfer

39. Wire transfer payments must be received by 6:00 p.m. ET on May 24, 1999. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 9100180
OBI Field: (Skip one space between each information item).

''AUCTIONPAY''

Taxpayer Identification No.: (same as FCC Form 159, block 26)
Payment Type Code: (enter ''A24U'')
FCC Code: 1 (same as FCC Form 159, block 23A: ''24'')
Payer Name: (same as FCC Form 159, block 2)
Lockbox No.: # 358420.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 24.'' Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(2) FCC Form 159

41. Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 will be included in a future Public Notice.

(3) Amount of Upfront Payment

42. As proposed in the *Phase II 220 MHz Service Public Notice*, the following upfront payments will apply in Auction No. 24:

(1) EAG Licenses: $0.01 * 0.15 MHz * License Population (the result rounded up to the next dollar).
(2) EA Licenses: $500 per license.

The upfront payment amount for each license has been calculated and is listed in Attachment A. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 24, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units associated with licenses on which the bidder wishes to place bids and hold high bids on at any given time.

43. To be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

44. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single

round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

45. **Note:** An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(4) Applicant's Wire Transfer Information for Purposes of Refunds

46. Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 24 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain an applicant's Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.D., *infra*.

D. Auction Registration

47. Approximately ten days before the auction, the FCC will issue a Public Notice announcing all qualified bidders for Auction No. 24. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

48. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

49. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on June 3, 1999 should contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

50. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

51. Qualified bidders must purchase remote electronic bidding software for $175.00 by May 25, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 24.) A software order form is included in this Public Notice.

F. Auction Seminar

52. On April 21, 1999, the FCC will sponsor a seminar for the Phase II 220 MHz Service auction at the Park Hyatt Washington, 1201 24th Street, N.W., Washington, D.C. 20037. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Phase II 220 MHz Service service and auction rules.

53. To register, complete the registration form included as Attachment I to this Public Notice. The registration form includes details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

54. All applicants whose FCC Form 175 and 175–S have been accepted for filing will be eligible to participate in a mock auction on June 4, 1999. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by Public Notice.

IV. Auction Event

55. The first round of the auction will begin on June 8, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

56. As proposed in the *Phase II 220 MHz Service Public Notice*, the 225 Phase II 220 MHz Service licenses will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

(2) Maximum Eligibility and Activity Rules

57. For Auction No. 24, the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. There is no provision for increasing a bidder's maximum eligibility during the course of an auction, as discussed under ''Auction Stages'' in Part IV.A.(2), *infra*.

58. To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

59. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* ''Minimum Accepted Bids'' in Part IV.B.(3), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. These procedures have proven

successful in maintaining the pace of previous auctions, as discussed in Parts IV.A.(4) and (5), *infra*.

(3) Activity Rule Waivers and Reducing Eligibility

60. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

61. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

62. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

63. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(4) Auction Stopping Rules

64. As proposed in the *Phase II 220 MHz Service Public Notice*, barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. In addition, however, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

65. The Bureau retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

66. Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(5) Auction Delay, Suspension, or Cancellation

67. As proposed in the *Phase II 220 MHz Service Public Notice*, by Public Notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. This approach has proven effective in resolving exigent circumstances in previous auctions. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(1) Round Structure

68. The initial bidding schedule will be announced by Public Notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

69. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Reserve Price or Minimum Opening Bid

70. As proposed in the *Phase II 220 MHz Service Public Notice*, the following formulae will be used for calculating minimum opening bids on a license-by-license basis in Auction No. 24:

(1) EAG Licenses: $0.01 * 0.15 MHz * License Population (the result rounded up to the next dollar)

(2) EA Licenses: $500 per license.

These amounts are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. Such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bids on specific licenses. Based on our experience in prior auctions, the Commission believes that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses.

(3) Minimum Accepted Bids and Bid Increments

71. As proposed in the *Phase II 220 MHz Service Public Notice* (63 FR 67685, December 8, 1998), once there is a standing high bid on a license, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For the Phase II 220 MHz auction, we will use a standard exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to compute the minimum bid increment through other methodologies if it determines that circumstance so dictate.

72. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

73. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

$A_i = (C * B_i) + ((1 - C) * A_{i-1})$

$I_{i+}1$ = smaller of $((1 + A_i) * N)$ and M

where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round i − 1), A_0 is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)

1. Calculation of percentage increment for round 2 using exponential smoothing:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

The smaller of $I_2 = (1 + 1) * 0.1 = 0.2$ or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 2 using the percentage increment (I_2 from above).

0.2 * $1,000,000 = $200,000

3. Minimum acceptable bid for round 2 = 1,200,000

Round 2 (3 new bids, high bid = 2,000,000)

1. Calculation of percentage increment for round 3 using exponential smoothing:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

The smaller of $I_3 = (1 + 2) * 0.1 = 0.3$ or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 3 using the percentage increment (I_3 from above)

0.2 * $2,000,000 = $400,000

3. Minimum acceptable bid for round 3 = 2,400,000

Round 3 (1 new bid, high bid = 2,400,000)

1. Calculation of percentage increment for round 4 using exponential smoothing:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

The smaller of $I_4 = (1 + 1.5) * 0.1 = 0.25$ or 0.2 (the maximum percentage increment)

2. Minimum bid increment for round 4 using the percentage increment (I_4 from above)

0.2 * $2,400,000 = $480,000

3. Minimum acceptable bid for round 4 = 2,880,000

(4) High Bids

74. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date- and time-stamp than bids submitted later in a round.

(5) Bidding

75. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

76. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 24.

77. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

78. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are

strongly encouraged to download and print bid confirmations *after* they submit their bids.

79. The bid entry screen of the Automated Auction System software for the Phase II 220 MHz Service auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

80. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

81. For any license on which the FCC is designated as the high bidder (i.e., a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter ''1'' in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(6) Bid Removal and Bid Withdrawal

a. Procedure

82. As proposed in the *Phase II 220 MHz Service Public Notice*, before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and, we believe, may serve to expedite the course of the auction.

83. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in ''High Bids,'' Part IV.B.(4).

84. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, i.e., reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for the Phase II 220 MHz Service auction, adoption of a limit on their use to two rounds is the most appropriate outcome. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in the Phase II 220 MHz Service auction. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

85. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

b. Calculation

86. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. *See* 47 CFR 1.2104(g) and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results

87. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

88. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 24 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(8) Auction Announcements

89. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

a. Inclusion of the Gulf of Mexico in Auction No. 24

90. The Commission will not designate the Gulf of Mexico as the seventh EAG and the 176th EA in the Phase II 220 MHz Service auction. This issue cannot be addressed in the context of this Public Notice, which, consistent with the Bureau's delegated authority, implements the Commission's rules pertaining to auctions procedures. The licensing regions for the 220 MHz Service were adopted by the Commission in the *220 Third Report and Order*, 62 FR 15978, April 3, 1997, and subsequently codified.

b. Minor Modifications to FCC Form 175 Applications

91. As noted in Section III.B., *supra*, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these

changes on-line, and submit a letter (and a courtesy copy to Anne Napoli at the same address) to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4–A760 Washington, D.C. 20554, briefly summarizing the changes. Questions about other changes should be directed to Anne Napoli of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

After bidding has ended, the Commission will issue a Public Notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Part IV.B.(6), *supra.* (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each Phase II 220 MHz Service license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may offer the license to the next highest bidders (in descending order) at their final bids, or reauction the spectrum. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

All applicants that submitted upfront payments but were not winning bidders for a Phase II 220 MHz Service license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request including wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 445 12th Street, S.W., Room 1–A824, Washington, D.C. 20554.

Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418–1995.

Federal Communications Commission.

Amy J. Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–9765 Filed 4–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2326]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

April 15, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by May 6, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 25 of the Cable Television Consumer and Competition Act of 1992, DBS Service Obligations (MM Docket No. 93–25).

Number of Petitions Filed: 9.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–9901 Filed 4–20–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, April 20, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate supervisory, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 – 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 16, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–10026 Filed 4–16–99; 4:57 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Gava International Freight Consolidators, (U.S.A.), Inc., 1525 Elmhurst Road, Elk Grove Village, IL 60007.

Officers: Pino Gazzetta, President, Pabio Vannucci, Director.

Dated: April 16, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–9924 Filed 4–20–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 14, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. FCNB Corp, Frederick, Maryland; to merge with First Frederick Financial Corporation, Frederick, Maryland, and thereby indirectly acquire First Bank of Frederick, Frederick, Maryland.

In connection with this application, Applicant also has applied to engage in owning and operating cash dispensing machines in locations owned or leased by unaffiliated third parties and thereby engage in data processing activities, through First Frederick Financial Corporation, pursuant to § 225.218(b)(14) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Commercial Bancshares, Inc., Minnetonka, Minnesota; to become a bank holding company by acquire 100 percent of the voting shares of First Commerce Bank, Bloomington, Minnesota, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Poteau Bancshares, Inc., Poteau, Oklahoma, and First Poteau Corporation, Poteau, Oklahoma; to acquire 100 percent of the voting shares of The First State Bank, Wister, Oklahoma.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Mustang Financial Corp., Rio Vista, Texas, and thereby indirectly acquire First State Bank, Rio Vista, Texas.

2. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Eastern Heights Bank, Maplewood, Minnesota.

Board of Governors of the Federal Reserve System, April 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–9898 Filed 4–20–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Prepayment Audit Authority Granted to the Agency for International Development

AGENCY: Federal Supply Service, GSA.

ACTION: Notification of prepayment audit authority.

SUMMARY: The General Services Administration has determined that it is cost-effective and in the public interest to grant prepayment audit authority to the U.S. Agency for International Development.

FOR FURTHER INFORMATION CONTACT: James Fitzgerald, Director, Audit Division, FSS/GSA, 202–501–3000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in me by Section 3726 of Title 31, U.S.C., I have determined that it is both cost-effective and in the public interest to delegate authority to the U.S. Agency for International Development (USAID) to conduct a prepayment audit of its foreign and domestic household goods and transportation bills, subject to the Federal Property Management Regulations, 41 CFR 101–41, and amendments thereto. These prepayment audits will be conducted by a General Services Administration (GSA) contractor, at the contractor's site. USAID may re-delegate this authority to any officer, official, or employee of USAID.

The Administrator of USAID shall notify GSA in writing of additional delegations.

Dated: April 16,1999.

Allan J. Zaic,

Assistant Commissioner, Office of Transportation and Property Management.

[FR Doc. 99–9991 Filed 4–20–99; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Advisory Committee to the Director, National Center for Environmental Health.

Times and Dates: 10 a.m.–5:15 p.m., May 3, 1999. 8:30 a.m.–3:30 p.m., May 4, 1999.

Place: Swissotel, 3391 Peachtree Street, NE, Atlanta, Georgia, 30326 (next to Lenox Square), in the ''Zermatt'' room, telephone 404/365–0065.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 20 committee members and presenters, plus 20 observers.

Matters to be Discussed

The Committee will provide advice on the following: environmental public health problems that potentially pose the greatest risks to human health and may not be receiving adequate attention; the primary prevention of birth defects and developmental and other disabilities; the prevention of secondary conditions in persons with a primary disability; and the research agenda needed to improve the science base relative to human health effects and environmental exposures and that will ultimately provide sound human health data for policy and decision-making. Particular attention will be paid to the matters of NCEH surveillance systems and the relationship between genetics and public health.

Persons wishing to make written or oral comments at the meeting should notify the contact person in writing or by telephone no later than close of business April 26, 1999.

Requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Anne Wilson, Program Analyst, Office of the Director, NCEH, CDC, 4770 Buford Highway, NE, M/S F49, Atlanta, Georgia 30341–3724, telephone 770/488–7321, fax 770/488–7024, e-mail: amw6@cdc.gov

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9925 Filed 4–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Times and Date: 1 p.m.–5 p.m., May 6, 1999; 7 p.m.–9 p.m., May 6, 1999.

Place: Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, Washington 98188, telephone 206/246–8600, fax 206/431–8687.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 200 people.

Purpose

The CDC and investigators from Seattle's Fred Hutchinson Cancer Research Center (FHCRC) will present and discuss findings of the Hanford Thyroid Disease Study and appropriate activities to follow-up study results to the Hanford Thyroid Morbidity Study Advisory Committee. The Committee will continue in evening session at 7 p.m., with a presentation by CDC, and/or its contractor, on the findings of the Hanford Thyroid Disease Study Draft Final Report and to allow more time for public input and comment. The purpose of the study was to determine if there was an increased risk for thyroid disease among a randomly selected study population exposed to atmospheric releases of radioactive iodine-131 (I–131) from the Hanford Nuclear Site in eastern Washington State during the 1940s and 1950s. The study, mandated by Congress, was conducted by a team of scientists at the FHCRC under contract from the CDC.

Background

In 1986, Freedom of Information Act requests led the Department of Energy to make public thousands of pages of documentation indicating that large quantities of radioactive materials were released into the atmosphere from the Hanford Nuclear Site. The radioactivity was a byproduct of nuclear weapons production from December 1944 through 1957. Most of the radioactivity was released in the form of I–131, which concentrates in the thyroid glands of those who eat food contaminated by it. The amount of I–131 released during this period was more than half a million curies, prompting concern regarding thyroid health effects. The government convened a special Hanford Health Effects Review Panel to review the documents and recommend steps to evaluate possible health consequences among those who live near the Hanford Site.

Two studies were undertaken as a result of these recommendations. The first was the Hanford Environmental Dose Reconstruction Project which estimated potential radiation doses to the thyroid among persons exposed to Hanford I–131 releases. The second was the Hanford Thyroid Disease Study. This study was designed to determine whether the exposures from Hanford resulted in an increased risk of thyroid disease in a randomly selected study population. In late 1989, a contract to perform this study was awarded to the FHCRC.

CONTACT PERSONS FOR ADDITIONAL INFORMATION: General information may be obtained from Mr. Mike Donnelly, Project Officer, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), National Center for Environmental Health (NCEH), CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Technical information may be obtained from Dr. Paul Garbe, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9927 Filed 4–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Public Meetings

Name: Update on Hanford Thyroid Disease Study Draft Final Report.

Dates: Wednesday, May 5, 1999, Thursday, May 6, 1999

Times: 7 p.m.–9 p.m., 7 p.m.–9 p.m.

Place: WestCoast Ridpath Hotel, West 515 Spraque, Spokane, Washington 99201,

Tel: (509) 838–2711, Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, Washington 98188, (206) 246–8600.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 200 people.

Purpose

The CDC and investigators from Seattle's Fred Hutchinson Cancer Research Center (FHCRC) will discuss findings on the Hanford Thyroid Disease Study Draft Final Report. The purpose of the study was to determine if there was an increased risk for thyroid disease among a randomly selected study population exposed to atmospheric releases of radioactive iodine-131 (I–131) from the Hanford Nuclear Site in eastern Washington State during the 1940s and 1950s. The study, mandated by Congress, was conducted by a team of scientists at the FHCRC under contract from the CDC.

Background

In 1986, Freedom of Information Act requests led the Department of Energy to make public thousands of pages of documentation indicating that large quantities of radioactive materials were released into the atmosphere from the Hanford Nuclear Site. The radioactivity was a byproduct of nuclear weapons production from December 1944 through 1957. Most of the radioactivity was released in the form of I–131, which concentrates in the thyroid glands of those who eat food contaminated by it. The amount of I–131 released during this period was more than half a million curies, prompting concern regarding thyroid health effects. The government convened a special Hanford Health Effects Review Panel to review the documents and recommend steps to evaluate possible health consequences among those who live near the Hanford Site.

Two studies were undertaken as a result of these recommendations. The first was the Hanford Environmental Dose Reconstruction Project which estimated potential radiation doses to the thyroid among persons exposed to Hanford I–131 releases. The second was the Hanford Thyroid Disease Study. This study was designed to determine whether the exposures from Hanford resulted in an increased risk of thyroid disease in a randomly selected study population. In late 1989, a contract to perform this study was awarded to the FHCRC.

CONTACT PERSONS FOR ADDITIONAL INFORMATION: General information may be obtained from Mr. Mike Donnelly, Project Officer, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), NCEH, CDC, 4770 Buford Highway, NE, M/S (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Technical information may be obtained from Dr. Paul Garbe, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–9926 Filed 4–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0674]

Draft Guidance for Industry on IND's for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format.'' This draft guidance is intended to provide recommendations to sponsors of investigational new drug applications (IND's) on the chemistry, manufacturing, and controls documentation (CMC), including microbiology documentation, that should be submitted for phase 2 and 3 of IND's. This draft guidance applies to human drugs and specified-biotechnology derived products.

DATES: Written comments on the draft guidance document may be submitted by July 20, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–810), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2570, or

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format.'' This draft guidance is intended to: (1) Facilitate drug discovery and development, (2) ensure that sufficient data will be submitted for the agency to assess the safety as well as the quality of the proposed clinical studies from the CMC and microbiology perspectives, and (3) expedite the entry of new drugs into the marketplace.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). This draft guidance represents the agency's current thinking on CMC content and format of IND's for phase 2 and 3 studies of drugs, including specified therapeutic biotechnology-derived products. 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.

II. Comments

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). 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 guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''.

Dated: April 13, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–9769 Filed 4–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1728 and HCFA–R–0266]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report and Supporting Regulations in 42 CFR 413.20, 413.24 and 413.106; *Form No.:* HCFA–1728 (OMB No. 0938–0022); *Use:* Participating providers are required to submit annual information to HCFA in order to achieve settlement of costs for health care services rendered to Medicare beneficiaries. The HCFA–1728 is the form used by Home Health Agencies to report their health care costs to determine the amount reimbursable for services furnished to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local or Tribal Gov.; *Number of Respondents:* 8,950; *Total Annual Responses:* 8,950; *Total Annual Hours Requested:* 1,575,200.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Disproportionate Share Hospital Payments—Institutions for Mental Disease; *Form No.:* HCFA–R–0266 (OMB# 0938–0746); *Use:* This PRA package announces the Federal share of disproportionate share hospital (DSH) allotments for Federal fiscal years (FFYs) 1998 through 2002. It also describes the methodology for calculating the Federal share DSH allotments for FFY 2003 and thereafter, and announces the FFY 1998 and FFY 1999 limitations on aggregate DSH payments States may make to institutions for mental disease (IMD) and other mental health facilities.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 2,160.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 13, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–9969 Filed 4–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0268, R–0271, and R–0274]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send

comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Assessment Information on Three Federal Government Web Sites: www.medicare.gov, www.4woman.gov, and www.healthfinder.gov; *Form Nos.:* HCFA–R–268 (OMB No. 0938–0756); *Use:* The purpose of the bounceback forms is to provide feedback to the government agencies that provide the web sites. The information collected through the bounceback forms will be used with other information collected about the web sites through focus groups, interviews, and expert evaluations. The combined information will guide future improvements to the web sites. Currently, there is no plan to distribute the information, other than through public health, medical, or other professional journals, in which we may report the results.; *Frequency:* Users will have the opportunity to complete the bounceback form whenever they exit the web site. *Affected Public:* Individuals or Households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 636,555; *Total Annual Responses:* 212,185; *Total Annual Hours:* 21,221.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Publication Information Sheet Reorder Form Feedback Questionnaire; *Form No.:* HCFA–R–0271 (OMB# 0938-new); *Use:* The Educational and Health Promotion Group (EHPG) develops materials for beneficiary-centered education, and makes efforts to improve beneficiary ability to make informed health decisions. The purpose of this collection is post-distribution testing. One Feedback Questionnaire will be placed in each box of bulk mailings, on the back of a publication information sheet, and reorder forms. The distributor is given the option of completing the questionnaire. Those who choose to complete the questionnaire will be providing EHPG with valuable information that will assist in improving future versions of the publication; *Frequency:* Annually; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, and State, Local, or Tribal Government; *Number of Respondents:* 20,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 500.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of Medicare+Choice (M+C) Medical Savings Account (MSA) Demonstration, Insurer Survey Component; *Form No.:* HCFA–R–0274 (OMB# 0938-new); *Use:* This survey instrument is designed for insurers to determine their marketing plans regarding high deductible health insurance plans for Medicare beneficiaries to be used in conjunction with MSA. The Insurer Survey is part of a larger evaluation of the M+C MSA demonstration mandated by the Balanced Budget Act of 1997. The overall evaluation plan includes collecting data on use of and payment for medical services from Medicare MSA enrollees through an addition to the Medicare Current Beneficiary Survey sample, collecting data from beneficiaries who disenroll from M+C MSA plans, and collecting data from insurers about their reactions to the M+C MSA demonstration; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions.; *Number of Respondents:* 350; *Total Annual Responses:* 350; *Total Annual Hours:* 155.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 13, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–9970 Filed 4–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 27, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9902 Filed 4–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Development and Maintenance of a Cryopreserved Embryo Bank.

Date: April 30, 1999.

Time: 1:00 p.m. to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–9904 Filed 4–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 21, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 10:30 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, Md 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, Md 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 1:30 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, Md 20892, (Telephone Conference Call).

Contact Person: Jarold M. Davidson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel IFCN 6.

Date: April 28, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 3:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 1999.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 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: April 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–9903 Filed 4–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.).

Permit No. TE—798107

Applicant: SWCA, Inc., Tucson, Arizona

Applicant requests authorization to conduct presence/absence surveys for Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*) within Arizona.

Permit No. TE—009543

Applicant: Mary E. Richardson, Mesa Arizona

Applicant requests authorization to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) on Organ Pipe Cactus National Monument, Arizona.

Permit No. TE—009926–0

Applicant: Gulf South Research Corporation, Baton Rouge, Louisiana

Applicant requests authorization to conduct presence/absence surveys for interior least tern (*Sterna antillarum athalassos*) along the Red River in Texas and Oklahoma.

Permit No. TE—009900–0

Applicant: Biozone, Inc., Prescott, Arizona

Applicant request authorization to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) in various counties in Arizona and New Mexico.

Permit No. TE—0005923–0

Applicant: National Park Service, Saguaro National Park, Tucson, Arizona

Applicant requests authorization to conduct presence/absence surveys for cactus ferruginous pygmy-owls (*Glaucidium brasilianum cactorum*) within lands administered by the National Park Service, Saguaro National Park.

Permit No. TE—10037–0

Applicant: Colorado River Indian Tribes, Parker, Arizona

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) in Arizona and California.

Permit No. TE—10440–0

Applicant: David N. Stokely, Billings, Missouri

Applicant requests authorization to conduct presence/absence surveys for the American burying beetle (*Nicrophorus americanus*) in northeastern Oklahoma.

Permit No. TE—006141–1

Applicant: Bruce D. Wilcox, Phoenix, Arizona

Applicant requests authorization to conduct presence/absence surveys for the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) in Texas and Oklahoma.

Permit No. TE—010441

Applicant: Jones & Stokes Associates, Inc., Phoenix, Arizona

Applicant requests authorization to conduct presence/absence surveys for Yuma clapper rail (*Rallus longirostris yumanensis*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), southwestern willow flycatcher (*Empidonax traillii extimus*), and northern aplomado falcon (*Falco femoralis septentrionalis*) in California, Arizona, New Mexico, and Texas.

Permit No. TE—828642

Applicant: Darling Environmental & Surveying, Ltd., Tucson, Arizona

Applicant requests authorization to conduct presence/absence surveys for Gila topminnow (including Yaqui) (*Poeciliopsis occidentalis*) in various counties in Arizona.

Permit No. TE—800900

Applicant: Lower Colorado River Authority, Austin, Texas

Applicant requests authority to conduct presence/absence surveys for black-capped vireo (*Vireo atricapillus*), golden-cheeked warbler (*Dendroica chrysoparia*), Houston toad (*Bufo houstonensis*), and fountain darter (*Etheostoma fonticola*) on Lower Colorado River counties within Texas.

Permit No. TE—820022

Applicant: PBS&J, Austin, Texas

Applicant requests authorization to conduct presence/absence surveys for the Concho water snake (*Nerodia harteri paucimaculata*) and fountain darter (*Etheostoma fonticola*) in Concho and Comal Counties, Texas.

Permit No. TE—010472–0

Applicant: Geo-Marine, Inc., Plano, Texas

Applicant requests authorization to conduct presence/absence surveys for the northern aplomado falcon (*Falco femoralis septentrionalis*), peregrine falcon (*Falco peregrinus anatum/tundrius*), Sneed pincushion cactus (*Coryphantha sneedii sneedii*) in southeastern New Mexico and west Texas.

DATES: Written comments on these permit applications must be received on or before May 21, 1999.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103.

Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30

days of the date of publication of this notice, to the address above.

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–9928 Filed 4–20–99; 8:45 am]

BILLING CODE 4510–01–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the U.S. Geological Survey (USGS), U.S. Department of the Interior, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 9–015,214 entitled ''Automated Groundwater Monitoring System and Method,'' to Systems Management, Inc. of Hunt Valley, MD 21031.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the grant of this published notice, USGS receives written evidence and argument which establishes that the grant of a license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a method of monitoring the quality of water at a ground water sampling site without human intervention. Waste at the sampling site is purged until at least one preselected purge criterion is satisfied. At least one water quality attribute is automatically measured at the sampling site, and quality of water at the site is determined based on the measured water quality attribute. The method is performed by a system including a control unit which, in accordance with a computer program, controls the taking of water quality attribute measurements at the sampling site. The control unit may be equipped with a port for downloading data to a technician on site and with a transceiver for communicating data to a base station via a communications network.

The availability of the invention for licensing has been announced on the USGS' website (*www.usgs.gov/tech-transfer*), on a inventor's website (*http://ma.water.usgs.gov/automo/*), and at industry exhibits appearing more than a year ago.

A copy of the cited patent application is available, for those with a licensing interest, from the USGS Technology Enterprise Office. It may be requested by phone at (703) 648–4450 or by e-mail at *rgraves@usgs.gov*.

Inquiries, comments and other materials relating to the contemplated license must be submitted by regular mail to Neil L. Mark, Technology Enterprise Office, U.S. Geological Survey, 211 National Center, Reston, VA 20192 or by email at *nmark@usgs.gov*.

Properly filed competing applications received by the USGS in response to this notice will be treated as objections to the grant of the contemplated license.

Anton L. Inderbitzen,

Director, Technology Enterprise Office.

[FR Doc. 99–9968 Filed 4–20–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–065–1220–00]

Notice of Closure and Restriction Order for BLM Lands in Fiddle Creek Area, Order No. ID–060–14; Correction

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater Districts, Idaho; DOI.

ACTION: Correction.

SUMMARY: In notice document 99–8956 on page 17676 in the FR issue of Monday, April 12, 1999, make the following correction:

Under item (2) of the Summary add: (3) Area is closed to all use from 8 p.m. to 6 a.m.

Dated: April 13, 1999.

Ted Graf,

Acting District Manager.

[FR Doc. 99–9920 Filed 4–20–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–01); (NMNM 96062)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 96062 for lands in Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16–2/3 percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, (505) 438–7586.

Dated: April 13, 1999.

Lourdes B. Ortiz,

Land Law Examiner.

[FR Doc. 99–9965 Filed 4–20–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore; South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, April 30, 1999.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting 03/24/99
3. Report of Officers
4. Report of Nickerson Subcommittee
5. Superintendent's Report
   Highlands Center trip report

Cellular transmission facilities
Turkey hunting
Dog run in Provincetown
Compendium update
6. Old Business
PWC Subcommittee
ORV Subcommittee
Commission handbook
Jack's Gas certificate of suspension
7. New Business
8. Agenda for next meeting
9. Date for next meeting
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: April 9, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–9921 Filed 4–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held May 13, 1999, at 9:00 am, at the town hall in Whitehall, Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Pub. L. 100–192 establishing the Selma to Montgomery National Historic Trail. This law was put in place to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

- Cooperative Agreements
- Federal Advisory Council Act
- Interpretive Themes
- Interpretive and Visitor Center locations
- Historic route treatment

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first served basis. Any member of the public may file a written statement concerning the matters to be discussed with Lee Edwards, Trail Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Lee Edwards, Trail Manager, Selma to Montgomery National Historic Trail, P.O. Box 5690, Montgomery, AL 36103, telephone 334–353–3744 or 334–727–6390.

Lee Edwards,

Trail Manager.

[FR Doc. 99–9923 Filed 4–20–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13), the Commission has submitted a proposal for the collection of information to OMB for approval. The proposed information collection is a 3-year extension of the current ''generic clearance'' (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for the following types of import injury investigations: countervailing duty, antidumping, escape clause, market disruption, NAFTA safeguard, and ''interference with programs of the USDA.'' Any comments submitted to OMB on the proposed information collection should be specific, indicating which part of the questionnaires or study plan are objectionable, describing the problem in detail, and including specific revisions or language changes.

DATES: To be assured of consideration, comments should be submitted to OMB on or before May 21, 1999.

ADDRESSES: Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: David Rossker, Desk Officer for U.S. International Trade Commission. Copies of any comments should be provided to Robert Rogowsky (United States International Trade Commission, 500 E Street, S.W., Washington, DC 20436).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed collection of information and supporting documentation may be obtained from Debra Baker (USITC, tel. no. 202–205–3180). Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

(1) The proposed information collection consists of five forms, namely the *Sample Producers', Sample Importers', Sample Purchasers', and Sample Foreign Producers' questionnaires* (separate forms are provided for questionnaires issued for the five-year reviews) and *Sample Notice of Institution for Five-Year Reviews.*

(2) The types of items contained within the sample questionnaires and institution notice are largely determined by statute. Actual questions formulated for use in a specific investigation depend upon such factors as the nature of the industry, the relevant issues, the ability of respondents to supply the data, and the availability of data from secondary sources.

(3) The information collected through questionnaires issued under the generic clearance for import injury investigations are consolidated by Commission staff and form much of the statistical base for the Commission's determinations. Affirmative Commission determinations in countervailing duty and antidumping investigations result in the imposition of additional duties on imports entering the United States. If the Commission makes an affirmative determination in a five-year review, the existing antidumping or countervailing duty order will remain in place. The data developed in escape-clause, market disruption, and interference-with-USDA-program investigations (if the Commission finds affirmatively) are used by the President/U.S. Trade Representative to determine the type of

relief, if any, to be provided to domestic industries. The submissions made to the Commission in response to the notices of institution of five-year reviews form the basis for the Commission's determination whether a full or expedited review should be conducted.

(4) Likely respondents consist of businesses (including foreign businesses) or farms that produce, import, or purchase products under investigation. Estimated total annual reporting burden for the period July 1999–June 2002 that will result from the collection of information is presented below.

TABLE 1—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 1999–JUNE 2002

Item	Producer questionnaires	Importer questionnaires	Purchaser questionnaires	Foreign producer questionnaires	Institution notices for 5-year reviews	Total
	Estimated burden hours imposed annually for July 1999–June 2002					
Number of respondents	890	871	575	208	86	2,630
Frequency of response	1	1	1	1	1	1
Total annual responses	890	871	575	208	86	2,630
Hours per response	52.6	44.1	23.2	28.0	7.4	39.9
Total hours	46,825	38,426	13,335	5,832	636	105,054

No recordkeeping burden is known to result from the proposed collection of information.

Issued: April 15, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9995 Filed 4–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–823–824 (Preliminary)]

Certain Aperture Masks From Japan and Korea [1]

Determinations

On the basis of the record [2] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain aperture masks, provided for in subheading 8540.91.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[3]

Also, pursuant to 19 U.S.C. 1677(24)(A), the Commission determines that the subject imports from Korea that are alleged to be sold at LTFV are negligible. The Commission's investigation with respect to Korea is thereby terminated pursuant to 19 U.S.C. 1673b(a)(1).

Background

On February 24, 1999, petitions were filed with the Commission and the Department of Commerce by BMC Industries, Inc., Minneapolis, MN, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain aperture masks from Japan and Korea. Accordingly, effective February 24, 1999, the Commission instituted antidumping investigations Nos. 731–TA–823–824 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 3, 1999 (64 FR 10316). The conference was held in Washington, DC, on March 17, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 12, 1999. The views of the Commission are contained in USITC Publication 3185 (April 1999), entitled Certain Aperture Masks from Japan and Korea: Investigations Nos. 731–TA–823–824 (Preliminary).

Issued: April 15, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9994 Filed 4–20–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The products covered by these investigations are all aperture masks (also known as ''shadow masks'') made from aluminum-killed, open-coil annealed steel (decarburized) (known generally as ''AK steel'') for color picture tubes (''CPTs'') used in television sets. AK steel includes the following types of steel: low carbon, AF (annealing-free) steel, AK type A steel (commonly referred to as AKM steel), AK type B steel, and general AK steel. The aperture masks covered by the scope generally have a vertical pitch (distance between the centers of two apertures) of greater than 0.28 mm. Specifically excluded from the scope are the following products: (1) aperture masks made from FeNi 36 alloy (whether sold under the brand names Invar, Inovar or LLTE); (2) aperture masks that have a vertical pitch of less than 0.28 mm that are generally used for color display tubes (''CDTs'') used in computer monitors; and (3) grille masks (a grille mask replaces the slots in an aperture mask with an array of finely tensioned vertical wires). The merchandise subject to these investigations is provided for in subheading 8540.91.50 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[2] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[3] Commissioners Carol T. Crawford and Stephen Koplan dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–69]

In the Matter of Certain Steel Wire Rod; Notice of Commission Determination Not To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to close any part of the hearing to the public.

SUMMARY: The Commission has determined to deny the requests of petitioners and Respondents Group (foreign producers in Japan, Trinidad & Tobago, Turkey, Germany, France, Spain, the United Kingdom, Italy, Venezuela, Brazil, and the American Wire Producers Association) to conduct

a portion of its hearing in the above-captioned investigation scheduled for April 15, 1999, *in camera. See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)).

FOR FURTHER INFORMATION CONTACT: William Gearhart, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3091, e-mail wgearhart@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes it should conduct its business in public in all but the most unusual circumstances. The Commission has determined that, in light of the nature of this investigation, it will be able to assess adequately all arguments raised by the parties without resorting to the extraordinary measure of an *in camera* hearing. Accordingly, the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. *See* 19 CFR 201.36(c)(1).

Authority: This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

Issued: April 15, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–9993 Filed 4–20–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States* v. *City of Albion, MI, et al.*, Civil No. 1:97–CF–1037 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on March 22, 1999, pertaining to the Albion Sheridan Township Landfill Superfund Site (the ''Site''), Calhoun County, Michigan. The proposed consent decree would resolve the United States' civil claims against the City of Albion, Michigan (the ''City'') and three third-party defendants named in this action.

Under the proposed consent decree, Cooper Industries, Inc. (''Cooper'') and Corning Incorporated (''Corning'') (collectively, the ''Settling RA Defendants'') would be obligated to finance and perform the remedial action at the Site as specified in EPA's Record of Decision, at an estimated cost of $2.6 million. The City and Decker Manufacturing Co. (''Decker'') (collectively, the ''Settling O&M Defendants'') would be obligated to finance and perform the operation and maintenance of the remedial action at the Site as specified in the Record of Decision, at an estimated cost of $0.538 million. The Settling O&M Defendants would be required to reimburse EPA's future response costs at the Site in the amount of $200,000. In addition, the City would be required to reimburse the Superfund $400,000, and Decker would be required to reimburse the Superfund $250,000, in separate obligations, toward the United States' past costs at the Site.

The Site is an inactive municipal landfill located approximately one mile east of the City of Albion in Sheridan Township, Calhoun County, Michigan. The Site, which covers approximately 18 acres, was widely used for both municipal and industrial waste disposal from approximately 1966 to 1981. In the early 1970s, the landfill accepted metal plating sludges, including insoluble hydroxides and carbonates. Other materials, such as paint wastes and thinners, oil and grease, dust, sand and dirt containing flyash and casting sand, also have been disposed of at the Site. Site activities resulted in contamination of soil and groundwater with hazardous substances. The Site will be remediated under the proposed consent decree. The remedial action to be implemented by the Settling RA Defendants consists of the following actions: (1) Removal and off-Site treatment of surface wastes; (2) construction of a landfill cap; (3) installation of passive gas collection system; (4) installation of groundwater monitoring wells; (5) institutional controls, including Site Security, on- and off-Site; and (6) construction of stormwater/infiltration retention basins. The operation and maintenance to be implemented by the Settling O&M Defendants consists of the following actions: (1) Operation and maintenance of the cap and other remedy components installed; (2) long-term (30 years) monitoring of groundwater; (3) institutional controls on certain adjacent parcels of land; and (4) maintenance of Site security.

Under the proposed consent decree, the United States agrees to move the Court for leave to withdraw the consent decree between the United States and Decker lodged with the Court on May 27, 1998. 63 FR 29752 (June 1, 1998). Also, under the proposed consent decree, the U.S. Environmental Protection Agency agrees to withdraw a unilateral administrative order issued to the City, Decker, Cooper and Corning on October 11, 1995, within fourteen days after entry of the proposed consent decree by the Court.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Albion, Michigan, et al.*, Civil No. 1:97–CV–1037 (W.D. Mich.), and DOJ Reference No. 90–11–2–1109. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Western District of Michigan, The Law Building, 330 Ionio Avenue, NW, 5th Floor, Grand Rapids, Michigan 49503, (616–456–2404); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Connie Puchalski (312–886–6719)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $22.50 for the consent decree only (90 pages at 25 cents per page reproduction costs), or $408.50 for the consent decree and all appendices (1,634 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–9967 Filed 4–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Chem-Pak Corporation*, Civ. No. CA–99–152 (ML), was lodged on March 26, 1999 with the United States District Court for the District of Rhode Island. The complaint in this action seeks to recover civil penalties for Chem-Pak Corporation's (''Chem-Pak's'') violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6921, *et seq.*, at its hazardous waste storage and treatment facility in Cranston, Rhode Island.

The proposed Consent Decree embodies an agreement providing for Chem-Pak to pay a civil penalty of $75,000 in settlement of the United States' claims. The proposed Consent Decree also will require Chem-Pak to purchase a new computerized record keeping system and to employ a full time environmental engineer at its facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Chem-Pak Corporation*, DOJ Ref. No. 90–7–1–905.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Fleet Center, Eighth Floor, 50 Kennedy Plaza, Providence, RI 02903; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, Fourth Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street, NW., Third Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Third Floor, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–9966 Filed 4–20–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–8]

Leonard E. Reaves III, M.D.; Reinstatement of Registration

On August 13, 1998, the then-Acting Deputy Administrator of the Drug Enforcement Administration (DA) issued a final order revoking DEA Certificate of Registration AR2127377 issued to Leonard E. Reaves III, M.D. (Respondent), effective September 18, 1998. See 63 FR 44,471 (August 19, 1998). The then-Acting Deputy Administrator further ordered that the revocation be stayed for six months from the effective date of the order ''during which time Respondent must present evidence to the Acting Deputy Administrator of his completion of a training course regarding controlled substances, and of his ongoing treatment for his codependency problems [and] must request modification, if necessary, of his 1995 renewal application to accurately reflect what schedules he wishes to be registered in to effectively treat his patient population.'' *Id.*

The then-Acting Deputy Administrator noted that should Respondent submit this information in a timely fashion, a subsequent order would be issued indicating that the conditions have been met, and reinstating and renewing Respondent's DEA Certificate of Registration. The then-Acting Deputy Administrator further noted that should Respondent fail to provide this information in a timely manner, the stay would be removed and Respondent's DEA Certificate of Registration would be revoked and any pending applications for renewal would be denied.

By order dated April 1, 1999, the Deputy Administrator found that more than six months had passed since the effective date of the final order regarding Respondent's DEA Certificate of Registration, and Respondent had not presented any evidence to the Deputy Administrator of his completion of a training course regarding controlled substances or of his ongoing treatment for his codependency problems. *See 64* FR 17,416 (April 9, 1999). In addition, the order indicated that the Deputy Administrator had not received a request from Respondent to modify his 1995 renewal application. As a result, the Deputy Administrator ordered that effective May 10, 1999, the stay would be removed and Respondent's DEA Certificate of Registration would be revoked.

It has recently come to the Deputy Administrator's attention that while Respondent did not submit the required information to the Deputy Administrator as directed by the August 13, 1998 final order, he did submit such information to other offices within DEA in a timely manner. Therefore, the Deputy Administrator concludes that Respondent has in fact met the conditions set forth in the August 13, 1908 final order, and as a result the April 1, 1999 final order removing the stay and revoking Respondent's DEA Certificate of Registration effective May 10, 1999 is rescinded. The Deputy Administrator further concludes that DEA Certificate of Registration AR2127377 shall be reinstated and renewed in Schedules, II, IIN, III, IIIN, IV and V. Respondent is reminded that he is required to indicate that there has been taken against his DEA Certificate of Registration in response to the liability question on any future applications.

Accordingly, the 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 April 1, 1999 final order found at 64 FR 17,416 (April 9, 1999), be and it hereby is rescinded. The Deputy Administrator further orders that DEA Certificate of Registration AR2127377, issued to Leonard E. Reaves III, M.D., be, and it hereby is, reinstated and renewed in Schedules II, IIN, III, IIIN, IV and V. This order is effective April 21, 1999.

Dated: April 15, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–9980 Filed 4–20–99; 8:45 am]

BILLING CODE 4410–09–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to

administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether to extend the exemption for certain milk sold in eight-ounce containers by school food authorities through the operation of the Compact Over-order Price Regulation.

DATES: The meeting is scheduled for Wednesday, May 5, 1999 to commence at the close of the public hearing for a proposed rule beginning at 9:00 a.m. as previously noticed at 64 FR 19084 (April 19, 1999).

ADDRESSES: The meeting will be held at the Wayfarer Inn, 121 S. River Road, U.S. Route 3, Bedford, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: April 15, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–9929 Filed 4–20–99; 8:45 am]

BILLING CODE 1650–01–P

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:* Extension.

2. *The title of the information collection:* Design Information Questionnaire.

3. *The form number if applicable:* IAEA Form N–71.

4. *How often the collection is required:* Once.

5. *Who will be required or asked to report:* Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.

6. *An estimate of the number of responses:* One.

7. *The number of annual respondents:* One.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 360.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71 (and the appropriate associated IAEA Form), to provide information concerning their installation for use of the International Atomic Energy Agency.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by May 21, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0056), 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 22nd day of March 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–9938 Filed 4–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Working Group Meeting; Notice of Meeting

The ACRS and ACNW Working Group will hold a joint meeting on May 11, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 11, 1999—8:30 a.m. until 12:00 Noon

The Joint Working Group will discuss the staff's proposed framework for risk-informed regulation in the Office of Nuclear Material Safety and Safeguards. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committees.

Oral statements may be presented by members of the public with the concurrence of the Working Group; written statements will be accepted and made available to the Working Group. 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 Working Group, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS/ACNW staff member 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 Working Group, along with any consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Working Group's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Senior Fellow, John N. Sorensen (telephone 301/415–7372) between 8:00 a.m. and 5:45 p.m. (EDT) or by e-mail JNS@NRC.gov. Persons planning to attend this meeting are urged to contact the above-named individual one to two working days prior to the meeting to be

advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: April 15, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–9937 Filed 4–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of April 19, 26, May 3 and 10, 1999.

PLACE: Commissioners' Conference Room, 11555, Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 19

There are no meetings scheduled for the Week of April 19.

Week of April 26—Tentative

Monday, April 26

2:00 p.m.—Affirmation Section (Public Meeting) (if needed)

Week of May 3—Tentative

Tuesday, May 4

9:00 a.m.—Meeting on NRC Response to Stakeholders' Concerns (Public Meeting) Location: (NRC Auditorium, Two White Flint North)

2:00 p.m.—Meeting on Planning, Budgeting and Performance Management Process (PBPM) And Institutionalizing Change (Public Meeting)

Wednesday, May 5

9:00 a.m.—Discussion of Intragovernmental Issues (Closed-Ex. 9b)

10:00 a.m.—Briefing on Safeguards Performance Assessment (Public Meeting)

Thursday, May 6

9:30 a.m.—Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Glenn Tracy, 301–415–1725)

11:30 a.m.—Affirmation Session (Public Meeting) (if needed)

Week of May 10—Tentative

There are no meetings scheduled for the Week of May 10.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (RECORDING)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on April 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of (a) Private Fuel Storage, LLC (PFS) Review of Board's Decision Granting Late-Filed Intervention Petition of Southern Utah Wilderness Alliance (LBP–99–3) (February 3, 1999) and (b) Duke Energy Corporation—Commission Review of LBP 98–33'' (PUBLIC MEETING) be held on April 15, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or *dkw@nrc.gov*.

Dated: April 16, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–10124 Filed 4–19–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 27 through April 9, 1999. The last biweekly notice was published on April 7, 1999 (64 FR 17021).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 and Directives Branch, Division of Administration 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 a hearing and petitions for leave to intervene is discussed below.

By May 21, 1999, 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 for the particular facility involved. 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 a 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.

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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC, by the above date. 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of 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 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 for the particular facility involved.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: March 23, 1999.

Description of amendment request: The proposed amendment would modify Technical Specification Surveillance Requirement 4.4.1.1.1 to require each recirculation pump discharge valve to be demonstrated OPERABLE at least once every 18 months and will delete footnote * that applies to Technical Specification 4.4.1.1.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications (TS) would modify the frequency of cycling the recirculation pump discharge valves from ''each STARTUP*

prior to THERMAL POWER exceeding 25% of RATED THERMAL POWER'' to ''at least once per 18 months;'' and replace the footnote applicable to TS 4.4.1.1, ''*If not performed in the previous 31 days'' with ''*Not Used.'' The change in testing frequency does not affect the probability of an accident since the valve testing is not related to accident initiation sequences. Consequences of accidents are not significantly increased because the proposed testing interval provides reasonable assurance that the valves will function. Testing of the valves will still be performed on a frequency that is allowed by TS if no events occur that require entry into Mode 3 or Mode 4. Therefore, the change will not involve a significant increase in the probability or consequences of an accident previously evaluated. Testing the valves in accordance with the inservice testing (IST) program on the same testing frequency as testing performed for the low pressure coolant injection system, provides adequate assurance that the valves can perform their safety function and will not increase the consequences of an accident previously evaluated. The change to the footnote is administrative in nature and will have no effect on the probability of an accident and will not increase any safety consequences.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes revise performing the testing of the recirculation pump discharge valves from ''prior to Startup* not to exceed 25% of rated thermal power.'' to ''at least once per 18 months'' and replace the footnote applicable to TS 4.4.1.1'' *If not performed in the previous 31 days'' with ''*Not Used'' does not result in a new accident precursor since the test only verifies that the valve can close which is its safety function. Deleting the information contained in footnote ''*'' that applies to TS 4.4.1.1.1 and designating it as ''* Not Used.'' is administrative in nature with no safety significance. Therefore, no different type of accident from any previously evaluated is introduced.

3. The change does not involve a significant reduction in the margin of safety.

The proposed changes revise the frequency of cycling the recirculation pump discharge valves from ''each STARTUP* prior to THERMAL POWER exceeding 25% of RATED THERMAL POWER'' to ''at least once per 18 months'' and replace the footnote applicable to TS 4.4.1.1 ''*If not performed in the previous 31 days'' with ''*Not Used.'' Altering the test frequency does not change valve stroke time or other performance or design characteristics related to the safety function of the valves. The potential for failure of the valve to close is not changed as a result of the proposed change since the same frequency is allowed by the current TS if no events occur that require entry into Mode 3 or Mode 4. Performing stroke time testing on a refueling outage basis and MOV testing on a periodic basis does not decrease the margin of safety associated with the valve performing its safety function. Revising footnote * is an administrative change and has no safety consequence. Therefore, the proposed changes do not involve a significant reduction in a 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.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: George F. Dick, Acting.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: March 3, 1999.

Description of amendment request: The proposed amendments would change the required qualifications for operations management specified in the Technical Specifications (TSs) for the Beaver Valley Power Station, Units 1 and 2 (BVPS–1 and BVPS–2). The requirement that the operations manager hold a Senior Reactor Operator (SRO) license at the time of appointment would be changed in the TSs to require that the assistant operations managers, one for each unit, hold an SRO license on their assigned unit. The TSs would not then require the operations manager hold an SRO license. Additionally, the Updated Final Safety Analysis Report (UFSAR) for each unit would be changed to require the operations manager to hold, or have held, an SRO license rather than presently hold a license. The UFSAR would require the same as the TS; that the assistant operations managers hold an SRO license on the unit to which they are assigned. Finally, the proposed amendments would substitute generic personnel titles for plant-specific personnel titles in the BVPS–1 and BVPS–2 TSs. The correlation between generic titles and plant-specific titles would be provided in the BVPS–2 UFSAR.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature. The revised requirements for who must hold a current senior reactor operator (SRO) License does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident nor alter the conditions or assumptions in any of the Updated Final Safety Analysis Report [UFSAR] accident analyses. The requirement that the operations manager hold or have held an SRO License is included in the revised Position Qualifications in the Unit 2 UFSAR, Table 13.1–2, sheet 30 of 35. The title changes are being made, consistent with TSTF–65, Rev 1 and help avoid the need for future Technical Specification changes. Therefore, it can be concluded that the proposed changes do not involve any increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No new failure modes are defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes are administrative in nature. One of the proposed changes requires that the manager who directly supervises the licensed operators at each unit be the holder of a current SRO license. The other change modifies personnel titles. Therefore, it can be concluded that the proposed changes do not involve any reduction in a 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.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Singh Bajwa.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: March 16, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.7.1.3

and associated Bases for the Primary Plant Demineralized Water (PPDW) System to clarify that the minimum specified volume of water in the PPDW Storage Tank is a usable volume. Additionally, the minimum usable volume of water in the PPDW Storage tank is increased, and a clarifying footnote that the specified value is an analysis value is added. Finally, several editorial and administrative changes, such as revision of action statement wording, addition of license number to the TS page, and addition of clarifying information to the TS Bases regarding analysis assumptions are made.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The failure of the primary plant demineralized water (PPDW) storage tank to provide a sufficient source of water to the Auxiliary Feedwater (AFW) System is not an accident initiating event. Therefore, the probability of an accident previously evaluated is not increased by this proposed amendment.

Limiting Condition for Operation (LCO) 3.7.1.3 titled ''Primary Plant Demineralized Water (PPDW)'' will be revised to specify the required value for PPDW storage tank volume as a usable volume. To reflect the value currently assumed in the analysis, the value stated in the LCO, for minimum required PPDW storage tank volume, would be slightly increased. The addition of proposed Footnote (1) to LCO 3.7.1.3 will ensure that plant operators recognize that the specified volume is an analysis value and that the value does not include measurement uncertainties. This footnote will require plant procedures to specify an increased required volume in the PPDW storage tank to account for measurement uncertainties. The proposed revisions to LCO 3.7.1.3 will assure that the PPDW storage tank minimum usable volume is maintained consistent with the design basis for the PPDW storage tank. The PPDW storage tank will continue to provide a sufficient source of water to the AFW pumps. Maintaining a sufficient source of water will ensure that the AFW System is capable of mitigating the consequences of Design Basis Accidents (DBAs) that could result in overpressurization of the RCS pressure boundary. The AFW system will continue to be capable of providing an emergency source of feedwater to the steam generators to act as heat sinks for sensible and decay heat removal from the reactor core. A sufficient volume of water will continue to be maintained in the PPDW storage tank to satisfy the Safe Shutdown evaluation.

The proposed changes to the Action statements will remove the required water volume value and add wording pertaining to the water volume not being within the limit. The LCO clearly states the value for the minimum required volume in the PPDW storage tank. Therefore, the proposed modification to the Action statements is administrative in nature and does not affect plant safety. The additional Bases wording pertaining to reactor coolant pump operation is administrative in nature and does not affect plant safety. The remaining change, which consists of the addition of plant operating license number, is editorial in nature and does not affect plant safety.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment will not change the physical plant or the modes of plant operation defined in the operating license. This change does not involve the addition or modification of plant equipment nor does it alter the design or operation of plant systems. The proposed amendment will require that the minimum volume in the PPDW storage tank be maintained consistent with analysis assumptions.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The minimum required volume in the PPDW storage tank would be slightly increased over the currently required value. This increase in the required volume will ensure that an adequate volume of water is maintained in the PPDW storage tank. The proposed addition of the term ''usable,'' along with the addition of Footnote (1), will ensure that the water volume specified in LCO 3.7.1.3 is appropriately increased in plant procedures to account for unusable volume in the tank and for measurement uncertainties. A sufficient volume of water will continue to be maintained in the PPDW storage tank to satisfy the Safe Shutdown evaluation.

The PPDW storage tank will continue to provide a sufficient source of water to the AFW pumps to ensure that the AFW System is capable of mitigating the consequences of DBAs that could result in overpressurization of the RCS pressure boundary. The AFW system will continue to be capable of providing an emergency source of feedwater to the steam generators to act as heat sinks for sensible and decay heat removal from the reactor core.

The proposed changes to the Action statements will remove the required water volume value and add wording pertaining to the water volume not being within the limit. The LCO clearly states the value for the minimum required volume in the PPDW storage tank. Therefore, the proposed modification to the Action statements is administrative in nature and does not affect plant safety. The additional Bases wording pertaining to reactor coolant pump operation is administrative in nature and does not affect plant safety. The remaining change, which consists of the addition of plant operating license number, is editorial in nature and does not affect plant safety.

Therefore, the proposed amendment does not involve a significant reduction in a 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.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: S. Singh Bajwa.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: August 31, 1998, and revised March 18, 1999.

Description of amendment request: The proposed amendment would revise Improved Technical Specification (ITS) 5.6.2.10, ''Steam Generator (OTSG [once-through steam generator]) Tube Surveillance Program,'' to include a new repair process, called a ''repair roll'' or ''re-roll.'' The process would be used to repair steam generator tubes with defects within the upper tubesheet. Changes to inservice inspection and reporting requirements are proposed for tubes which are repaired using this process. In addition, several format and editorial changes are proposed to ITS 5.6.2.10 and to ITS 5.7.2, ''Special Reports,'' for clarification purposes. The March 18, 1999 revision superceded the August 31, 1998 request, and includes the results of recent accident analyses conducted to identify the maximum OTSG tube tensile loads. As a result of the increased tube tensile loads, some tubes will require a double repair roll. The double repair roll methodology was not included in the original amendment request. Therefore, this notice revises the previous Notice of Consideration of Issuance of Amendment (63 FR 56249).

Basis for proposed no significant hazards consideration determination: 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) Involve a significant increase in the probability or consequences of an accident previously evaluated?

The repair roll process is a method to create a new primary-to-secondary pressure boundary joint in the upper tubesheet of Babcock & Wilcox (B&W) Once Through Steam Generators (OTSGs) manufactured with Inconel Alloy 600 tubes. The repair roll process creates a new roll joint in the OTSG tubes at a point closer to the secondary face of the tubesheet than the existing roll joint. The new pressure boundary is established by the repair roll to remove degradation of the existing roll joint from pressure boundary service. The repair roll process has been qualified as an acceptable repair methodology for use in the upper tubesheet of the Crystal River Unit 3 (CR–3) OTSGs. The proposed License Amendment Request (LAR) proposes to implement the qualified OTSG tube repair roll process, and also addresses several editorial and format changes which do not impact the current CR–3 accident analyses.

The qualification of the OTSG tube repair roll methodology is based on establishing a mechanical joint length that will carry all structural loads imposed on the OTSG tubes while maintaining the required margins during normal and accident conditions. A series of tests and analyses were performed to establish the minimum acceptable length of the OTSG tube repair roll. Tests performed included leak, tensile, fatigue, ultimate load and eddy-current measurement uncertainty. The analyses evaluated plant operating and faulted load conditions, in addition to OTSG tubesheet bow effects. OTSG tube leakage remains bounded by the evaluation presented in the CR–3 Final Safety Analysis Report (FSAR) for a main steam line break (MSLB). The proposed change also includes a description of the required inspection program for the OTSG tube repair rolls. The additional inspection requirements do not change any accident initiators. The proposed inspections following OTSG tube repair roll installation, and during future inservice inspections, assure continuous monitoring of these tubes such that inservice degradation of tubes repaired by the repair roll process will be detected. Based on the qualification testing and analyses performed, as well as the industry experience with the use of OTSG tube repair roll processes, there are no new safety issues associated with the use of repair roll methodology. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from previously evaluated accidents?

The repair roll creates no new failure modes or accident scenarios. The new pressure boundary joint created by the repair roll process has been demonstrated, by testing and analysis, to provide structural and leakage integrity equivalent to the original design and construction for all normal operating and accident conditions. Furthermore, the testing and analysis demonstrate the repair roll process creates no new adverse effects for the repaired tube and does not change the design or operating characteristics of the OTSGs. In the unlikely event that a tube with a repair roll should fail and sever completely at the transition of the repair roll region, the tube would remain engaged in the tubesheet bore, preventing interaction with other surrounding tubes. In this case, leakage is bounded by the steam generator tube rupture (SGTR) accident analysis. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety?

The repair roll process effectively removes the defective/degraded area of the tube from service. The repair roll interface created with the tubesheet satisfies the necessary structural, leakage and heat transfer requirements. The mechanical joint is constrained within the tubesheet bore; thus, there is no additional risk associated with tube rupture. The accident leakage is shown to be less than one gallon per minute primary-to-secondary leakage. Therefore, the FSAR analyzed accident scenarios remain bounding, and the use of the repair roll process does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Sheri R. Peterson.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: March 1, 1999.

Description of amendment request: The proposed amendment would approve changes to the Updated Safety Analysis Report (USAR) concerning design requirements for physical protection from tornado missiles for safety-related equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed activity does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The associated USAR changes reflect use of the Electric Power Research Institute (EPRI) Topical Report, ''Tornado Missile Risk Evaluation Methodology, (EPRI NP–2005),'' Volumes I and II. This methodology has been reviewed, accepted and documented in an NRC Safety Evaluation dated October 26, 1983. The NRC concluded that: ''the EPRI methodology can be utilized when assessing the need for positive tornado missile protection for specific safety-related plant features in accordance with the criteria of SRP Section 3.5.1.4.''

The EPRI methodology has been previously applied at CPS to resolve previously identified missile protection issues during the initial licensing of the plant. The NRC documented their acceptance of this methodology in Supplement 6 to the CPS Safety Evaluation Report (NUREG–0853, July 1986).

As permitted in the Standard Review Plan (NUREG–0800), the total probability of damage to plant systems or components initiated from tornado missiles leading to consequences in excess of 10 CFR Part 100 guidelines will be maintained below an acceptable level. The results of the current tornado missile hazards analysis are such that the calculated total tornado missile hazard probability is approximately 3.4×10–7 per year. This is lower than the value determined to be acceptable, i.e., 1×10–6 per year.

Although it has been calculated that these targets have a higher total probability of being exposed to tornado missiles than that described to be acceptable in SER Supplement 6, Section 3.5.1.3, the revised tornado missile hazards analysis for CPS has determined that this probability is acceptably low.

With respect to the probability of occurrence or the consequences of an accident previously analyzed in the USAR, the possibility of a tornado reaching CPS and causing damage to plant systems, structures and components is a design basis event considered in the USAR. The changes being proposed herein do not affect the probability that a tornado will reach the plant, but they do, from a licensing basis perspective, reflect a slightly increased, calculated probability that missiles generated by the winds of a tornado might strike certain plant systems or components. The tornado missile analysis determined that there are a limited number of safety-related components that theoretically could be struck. The probability of tornado-generated missile strikes on important systems and components (as discussed in Regulatory Guide 1.117) was analyzed using the probability methods described above. Based on the low, calculated probability, the total (cumulative) probability of strikes will be maintained below an adequately low acceptance criterion to ensure overall plant safety. On this basis, the proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident, due to the low probability of a tornado missile striking safety-related systems or components.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

(2) The proposed activity does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve evaluation of whether any physical protection of safety-related equipment from tornado missiles is required relative to the probability of such damage without physical protection. A tornado at CPS is a design basis event considered in the USAR, however, a tornado is not postulated to act as an initiator for any new or different kind of accident, or to occur coincident with any of the design basis accidents in the USAR. The low probability threshold established for missile damage to plant systems is consistent with these assumptions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) The proposed activity does not involve a significant reduction in a margin of safety.

Under the proposed change, physical protection of safety-related equipment from tornado missiles must be considered if it has been determined that the calculated total tornado missile hazard probability is greater than $1 \times 10–6$ per year. The proposed change to the USAR to specifically identify this threshold may slightly increase the probability of a malfunction of equipment important to safety previously evaluated in the safety analysis report (i.e., changing the requirements from protecting all safety-related systems and components to not requiring protection if there is an extremely low probability that a tornado missile could strike portions of safety related systems and components). However, the changes are consistent with the minimum acceptable requirements as documented in the NRC's Safety Evaluation Report dated October 23, 1983. Therefore, there will be no significant reduction to the margin of safety that may be associated with the potential for safety-related equipment to be damaged from tornado-generated missiles.

Therefore, the proposed changes do not involve a significant reduction in a 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.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

NRC Section Chief: Anthony J. Mendiola.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: March 17, 1999.

Description of amendment request: The licensee is proposing to change Technical Specifications 3.5.2, ''Emergency Core Cooling Systems—ECCS Subsystems—Tavg greater than or equal to 300 °F;'' 3.7.1.7, ''Plant Systems—Atmospheric Steam Dump Valves;'' and 3.7.6.1, ''Plant Systems—Control Room Emergency Ventilation System.'' The proposed Technical Specification changes will revise (1) surveillance requirements for Emergency Core Cooling System valves, (2) the atmospheric steam dump valve requirements to focus on the steam release path instead of the individual valves, and (3) the allowed outage times for the atmospheric steam dump valves and Control Room Emergency Ventilation System.

Basis for proposed no significant hazards consideration determination: 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:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.5.2

The removal of 2–CH–434, a manual valve, from the list of valves to be checked every 31 days by Surveillance Requirement (SR) 4.5.2.a.10 will not change the requirement for this containment isolation valve to be locked closed. The position of valve 2–CH–434, and the associated locking device, will be verified by SR 4.6.1.1.a. Although this change will result in the position of 2–CH–434 being checked less often, there are sufficient Technical Specification and administrative requirements to ensure that 2–CH–434 will be maintained in the proper position. An additional benefit of this proposed change will be a reduction in personnel exposure since 2–CH–434 is located inside containment. This proposed change will not result in any modification to Emergency Core Cooling System (ECCS) alignment or operation.

The addition of the footnote to SR 4.5.2.a.10 will clarify that 2–SI–306 is pinned and locked open to the required throttle position. 2–SI–306, which is the Shutdown Cooling (SDC) System throttle valve in the discharge piping of the SDC pumps, is required to be left in a throttled position after SDC has been secured to ensure sufficient low pressure safety injection (LPSI) flow will be available. This proposed change will not result in any modification to ECCS alignment or operation.

The change in the valve nomenclature used in SR 4.5.2.e and Table 4.5–1 from throttle valve to injection valve will eliminate any confusion between valve description and valve operation. This proposed change will not result in any modification to ECCS alignment or operation.

The addition of the License Amendment Number to the bottom of Page 3/4 5–6a will not result in a technical change to this Technical Specification.

Technical Specification 3.7.1.7

The proposed changes will expand the scope of Technical Specification 3.7.1.7 to include the steam release path, instead of just the individual atmospheric dump valves (ADVs). The allowed outage times will be modified to address inoperable ADV lines and the impact inoperable ADV lines will have on the ability of Millstone Unit No. 2 to mitigate a loss of coolant accident (LOCA). If one ADV line is inoperable, a plant shutdown will be required if the ADV line is not restored to operable status within 48 hours. An allowed outage time of 48 hours to restore the ADV line to operable status is acceptable based on the low probability of a LOCA occurring during this time period, and the subsequent loss of offsite power and the failure of one train of high pressure safety injection (HPSI). This is also consistent with the allowed outage time for one ECCS train (Technical Specification 3.5.2).

If two ADV lines are inoperable, a plant shutdown will be required if at least one ADV line is not restored to operable status within one hour. The plant will be required to be in Mode 3 within the following 6 hours. These time requirements are based on Technical Specification 3.0.3. However, the time to reach Mode 4 will remain at the ''following 24 hours'' to reflect the impact inoperable ADV lines may have on the time to cool down the plant.

The proposed change to the surveillance requirement will ensure operation of the ADV lines, consistent with the accident analysis, is verified.

The proposed change in component nomenclature is consistent with current Millstone Unit No. 2 terminology. This is not a technical change.

The proposed changes to the Bases of Technical Specification 3.7.1.7 are consistent with the changes just described.

Technical Specification 3.7.6.1

The action requirements for the Control Room Emergency Ventilation System will be modified to address the situation when both Control Room Emergency Ventilation Trains are inoperable in Modes 1, 2, 3, and 4. This situation is expected to occur during normal plant operation when the air filters in the common supply header to both trains are cleaned/replaced. Since this is a common supply header, both trains are affected and would be inoperable. The proposed action requirements will address this situation so

that Technical Specification 3.0.3 will not be entered as a result of an expected plant activity. However, since the proposed action requirements are the same as the requirements of Technical Specification 3.0.3, the time the plant is allowed to operate in this situation will not change.

The proposed changes to the Technical Specifications and associated Bases will have no adverse effect on plant operation or accident mitigation equipment. The proposed changes will ensure that the necessary equipment to mitigate the design basis accidents will be available, or a plant shutdown will be required. In addition, the proposed changes can not cause an accident, and they will ensure the accident mitigation equipment will continue to operate as assumed in the analyses to mitigate the design basis accidents. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications and associated Bases will have no adverse effect on plant operation or accident mitigation equipment. The proposed changes will ensure that the necessary equipment to mitigate the design basis accidents will be available, or a plant shutdown will be required. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications and associated Bases will ensure that the necessary equipment to mitigate the design basis accidents will be available, or a plant shutdown will be required. The proposed changes will not result in any plant configuration changes. There will be no adverse effect on plant operation or accident mitigation equipment. The plant response to the design basis accidents will not change. Therefore, there will be no significant reduction in the margin of safety as defined in the Bases for the Technical Specifications affected by these proposed changes.

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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: March 19, 1999.

Description of amendment request: The proposed changes will relocate Technical Specifications (TSs) 3.3.3.2, ''Instrumentation, Incore Detectors,'' 3.3.3.3, ''Instrumentation, Meteorological Instrumentation,'' to the Millstone, Unit No. 2 Technical Review Manual (TRM). Index Page V will be revised by eliminating the sections corresponding to incore detectors (Page ¾ 3–0), seismic instrumentation (Page ¾ 3–32), and meteorological instrumentation (Page ¾ 3–36). These sections, as well as changes to the associated Bases, will be relocated to the TRM.

Basis for proposed no significant hazards consideration determination: 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:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.3.3.2, Instrumentation, ''Incore Detectors,'' is proposed to be relocated to the TRM where future changes will be controlled in accordance with 10 CFR 50.59. Relocation of this Technical Specification to the TRM does not imply any reduction in its importance in confirming that core power distribution are bounded by safety analysis limits. These instruments are neither used for, nor capable of, detecting a significant abnormal degradation of the reactor coolant pressure boundary before a design basis accident, nor do they function as a primary success path to mitigate events which assume a failure of, or a challenge to, the integrity of fission product barriers. Although the core power distribution (measured by the incore detectors) constitutes an important initial condition to design basis accidents and therefore needs to be addressed by Technical Specifications, the detectors themselves are not an active design feature needed to preclude analyzed accidents or transients. The proposed change will not alter the way core power distribution is measured by the incore detectors, nor will it alter any of the power distribution assumptions used in the accident analysis. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Technical Specification 3.3.3.3, Instrumentation, ''Seismic Instrumentation,'' is proposed to be relocated to the TRM where future changes will be controlled in accordance with 10 CFR 50.59. Relocation of Technical Specification 3.3.3.3 to the TRM does not imply any reduction in its importance in determining the response of those nuclear power plant features important to safety in the event of an earthquake. Seismic instrumentation does not actuate any protective equipment or serve any direct role in the mitigation of an accident. The capability of the plant to withstand a seismic event or other design basis accident is determined by the initial design and construction of systems, structures, and components. The instrumentation is used to alert operators to the seismic event and evaluate the plant response. The seismic instrumentation does not serve as a protective design feature or part of a primary success path for events which challenge fission product barriers. The proposed change will not alter the way these instruments are used in determining the response of those nuclear power plant features important to safety in the event of an earthquake, nor will it alter the capability of the plant to withstand a seismic event. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Technical Specification 3.3.3.4, Instrumentation, ''Meteorological Instrumentation,'' is proposed to be relocated to the TRM where future changes will be controlled in accordance with 10 CFR 50.59. Relocation of Technical Specification 3.3.3.4 to the TRM does not imply any reduction in its importance in providing a basis for estimating annual radiation doses resulting from radioactive materials released in airborne effluents. The instrumentation does not serve to ensure that the plant is operated within the bounds of initial conditions assumed in design basis accident and transient analyses or that the plant will be operated to preclude transients or accidents. Likewise, the meteorological instrumentation does not serve as part of the primary success path of a safety sequence analysis used to demonstrate that the consequences of these events are within the appropriate acceptance criteria. The proposed change will not alter the way these instruments are used in providing a basis for estimating annual radiation doses resulting from radioactive materials released in airborne effluents. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Revision of Index page V and the proposed changes to the associated Bases sections are administrative changes. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

The proposed changes do not alter how any structure, system, or component functions. There will be no effect on

equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request does not impact the probability of an accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed relocation of incore detector instrumentation requirements to the TRM does not imply any reduction in their importance in confirming that core power distribution is bounded by safety analysis limits. The incore detectors will still be used to measure core power distribution and the assumptions used in the accident analysis will be verified. The proposed relocation of seismic instrumentation requirements to the TRM does not imply any reduction in their importance in determining the response of those nuclear power plant features important to safety in the event of an earthquake. The seismic instrumentation will still be used to determine the response of those nuclear power plant features important to safety in the event of an earthquake. The capability of the plant to withstand a seismic or other design basis accident, which is determined by the initial design and construction of systems, structures, and components will not be altered. The relocation of meteorological instrumentation requirements to the TRM does not change the way these instruments are used in providing a basis for estimating annual radiation doses resulting from radioactive materials released in airborne effluents. The meteorological instrumentation will continue to perform their function in exactly the same way.

The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

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.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: September 11, 1998, as supplemented by letter dated January 14, 1999.

Description of amendment request: The proposed amendments would change the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise TS 6.8.4f., ''Containment Polar and Turbine Building Cranes,'' to control the operation of the containment polar cranes in jet impingement zones.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical Specification (TS) 6.8.4f requirement to have a program that will ensure the position of the polar cranes precludes jet impingement from a postulated pipe rupture was previously evaluated in the NRC staff's safety evaluation for License Amendments (LA) 20 and 21. The proposed change is to control the operation of the containment polar cranes in jet impingement zones.

PG&E evaluated a high energy line break (HELB) scenario for core damage frequency (CDF) considering operation of a polar crane. A postulated HELB would have to damage the crane or cause its load to drop in a manner that damages a component that exacerbates the HELB event and leads to core damage. The PRA evaluation for this scenario concluded the CDF is 1.6E–9 per year. It is not a significant increase in CDF compared to never operating the polar crane in jet impingement zones. The CDF for this scenario is nonrisk significant when compared to the industry standard threshold for risk significance for an operational evolution, which is 1E–6 per year. Several factors that further lower the risk of CDF include: 1) the movement of heavy loads is done in accordance with the DCPP Heavy Loads Program, which provides assurance that a dropped load would not lead to core damage, 2) the polar crane had been evaluated to withstand jet impingement loads without the seismic loads, and 3) the probability of simultaneous seismic and HELB events is low.

Therefore, based on probabilistic considerations, the risk associated with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deterministic engineering methods required combining both the seismic and jet impingement loads to qualify Design Class I structures. The polar cranes were not originally qualified for these combined loads. This resulted in administrative controls that prohibited parking the polar cranes in jet impingement zones to preclude jet impingement loads from a postulated pipe rupture. The proposed change does not involve a physical change to the plant, but it does involve a change to the TS required program for containment polar crane operation.

The proposed change is to control the operation of the containment polar cranes in jet impingement zones. It recognizes that there are jet (HELB) and target (polar crane) interactions. They were previously not considered for postulated jet impingement analyses because administrative controls prohibited parking the polar cranes in jet impingement zones. PG&E has evaluated jet impingement loads on the polar crane and determined it is able to withstand these loads without seismic loads. Based on this evaluation, the polar crane would not fail due to a HELB event. The movement of a heavy load would be done in accordance with the DCPP Heavy Loads Program. Thus, there would be no consequential failures that would lead to core damage.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The current TS 6.8.4f. requirement to have a program that will ensure the position of the polar cranes precludes jet impingement from a postulated pipe rupture was previously evaluated in the NRC staff's safety evaluation for LAs 20 and 21.

The credible HELB sources that could impinge on the polar crane were identified and evaluated. The feedwater and main steam line steam generator nozzles are the only credible HELBs that could impinge upon the polar crane. The structural integrity of these lines was evaluated and determined to be of robust design.

The margin of safety affected by the proposed change involves a comparison between the margin of safety afforded by no operation of the polar crane and operation that is controlled by procedures. The margin of safety in this case is the increase in risk for CDF caused by a scenario that postulates that operation of the polar crane would lead

to core damage. The risk for CDF has been evaluated and determined to be nonrisk significant. The CDF value is well below the industry standard threshold for acceptable risk for an operational evolution, which is 1E–6 per year.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Stuart A. Richards.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 12, 1998.

Description of amendment request: The proposed amendments would change the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise TS 6.9.1.8, ''Core Operating Limits Report,'' to allow use of NRC approved addenda to WCAP–10054–P–A, ''Westinghouse Small Break ECCS Evaluation Model Using NOTRUMP Code,'' August 1985, to determine core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative in nature in that it revises the Technical Specification (TS) Administrative Controls for the Core Operating Limits Report to include reference to NRC approved addenda to WCAP–10054–P–A, ''Westinghouse Small Break ECCS Evaluation Model Using the NOTRUMP Code,'' August 1985. The proposed change would allow the use of the analytical methods in WCAP–10054–P–A, Addendum 2, Revision 1, Addendum to the Westinghouse Small Break ECCS.

Evaluation Model Using the NOTRUMP Code: Safety Injection Into the Broken Loop and COSI Condensation Model,'' July 1997, and other NRC approved addenda to WCAP–10054–P–A to determine core operating limits for Diablo Canyon Power Plant (DCPP). Because plant operation will continue to be limited in accordance with cycle specific core operating limits that are established using an NRC approved methodology, NRC approved addenda to WCAP–10054–P–A are acceptable for use in determining DCPP Unit 1 and 2 cycle specific core operating limits.

The change does not affect plant operation, or physically alter or change the function of structures, systems, or components required to mitigate the consequences of a design basis accident. In addition, it cannot initiate a transient or affect the probability of occurrence of any previously analyzed accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the TS to allow the use of NRC approved analytical methods in WCAP–10054–P–A, Addendum 2, Revision 1, and other NRC approved addenda to WCAP–10054–P–A, to determine core operation limits. The change is consistent with the requirements of the TS, and does not affect plant operation, or physically alter or change the function of structures, systems, or components required to mitigate the consequences of a design basis accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change revises the TS to allow the use of the NRC approved analytical methods in WCAP–10054–P–A, Addendum 2, Revision 1 and other NRC approved addenda to WCAP–10054–P–A, to determine core operating limits. The change is consistent with the requirements of the TS, and does not affect plant operation, or physically alter or change the function of structures, systems, or components required to mitigate the consequences of a design basis accident. The acceptance limits for the small break loss-of-coolant accident are not affected by this change and will continue to be met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Stuart A. Richards.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 25, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to relocate the time restriction for movement of irradiated fuel and its related basis page from the TSs to the IP3 Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: 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) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously [evaluated]?

Response

Relocation (i.e., removal from TS) of TS 3.8.A.9 and its basis for the minimum time prior to movement of more than 76 irradiated fuel assemblies (267 hour limit) will not involve a significant increase in the probability or consequences of an accident since the relocation of the TS to administrative controls governed by 10 CFR 50.59 (FSAR) does not affect the availability or function of fuel storage and handling equipment or the SFP [spent fuel pool] cooling system. The waiting time of 267 hours following plant shutdown before unloading more than 76 assemblies from the reactor is to ensure that the maximum SFP water temperature will be within design objectives as stated in the FSAR.

The waiting time of 267 hours is not an initiator of an accident and the proposed change does not alter overall system operation, physical design, system configuration, or operational setpoints. There will be no significant increase in the consequences of an accident because the restricted movement time for irradiated fuel will continue to be administratively controlled under 10 CFR 50.59.

The other TS of section 3.8.A (such as the remaining portion of 3.8.A.9, and 3.8.A. 10) and the other controls ensure that doses from a postulated FHA are within 10 CFR 100 limits.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

The basis for the waiting time of 267 hours following plant shutdown before unloading more than 76 assemblies from the reactor is to ensure that the maximum pool water temperature will be within design objectives as stated in the FSAR. Relocation of this waiting time of 267 hours for irradiated fuel will not create the possibility of a new or different kind of accident from any previously evaluated. The TS change will not create the possibility of a new or different kind of accident from any previously evaluated since it does not alter the administrative controls for fuel handling or the operation, physical design, system configuration, or operational setpoints for fuel handling and SFP cooling. The plant systems for fuel storage and handling, and SFP cooling are operated in the same manner as before and, consequently, the relocation does not introduce any new accident initiators or failure mechanisms and does not invalidate the existing FHA response. The minimum waiting time for movement of more than 76 irradiated fuel assemblies is not an accident initiator. The minimum waiting time will continue to be controlled under 10 CFR 50.59.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

Relocation (i.e., removal from TS) of TS 3.8.A.9 and its basis for the waiting time of 267 hours following plant shutdown for irradiated fuel will not involve a significant reduction in margin of safety. The waiting time of 267 hours following plant shutdown before unloading more than 76 assemblies from the reactor is to ensure that the maximum SFP water temperature will be within design objectives as stated in the FSAR. The relocation is a change to the administrative controls that are used to limit the heat load on the SFP cooling system, and those administrative controls will be governed by 10 CFR 50.59. The manner in which fuel storage and handling is performed, and how the SFP cooling system is operated does not change and there is no change to physical design, system configuration, or operational setpoints. The other controls and the existing TS assure that dose from a postulated FHA are within 10 CFR 100 limits. Previous analyses remain unchanged. The current TS does not meet the criteria in 10 CFR 50.36(c)(2)(ii) for inclusion in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 28, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to change the setpoint of the automatic reactor trip on turbine trip to at or below the P–8 setpoint.

Basis for proposed no significant hazards consideration determination: 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) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of reactor trip on turbine trip at [greater than or equal to] 50% to the P–8 Permissive function versus its current setting of [greater than or equal to] 10%, as revised in TS section 2.3.1.C.(3), 2.3.2.A, 2.3.2.B, Table 3.5–2, item 12, Table 4.1–1, item 21 and associated bases, does not significantly increase the probability or consequences of an accident previously evaluated. This additional function, change in reactor trip on turbine trip setpoint, does not cause the initiation of any accident, nor create any new credible limiting single failure, nor result in any event previously deemed incredible being made credible. The existing separation of the reactor and protection functions are not adversely impacted. In addition, the safety functions of safety related systems and component, which are related to accident mitigation, have not been altered. The change in the P–7 or P–8 circuitry does not directly initiate an accident. The consequences of accidents previously [evaluated] in the IP3 FSAR [final safety analysis report] are unaffected by this change because no change to any equipment response or accident mitigation scenario has resulted. There are no additional challenges to fission product barrier integrity. Therefore, the probability or consequences of an accident previously evaluated will not be increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

By adding the reactor trip on turbine trip at [greater than or equal to] 50% to the P–8 Permissive function and setpoint, versus its current setting of [greater than or equal to] 10% and revising TS sections 2.3. l.C.(3), 2.3.2.A, 2.3.2.B, Table 3.5–2, item 12, Table 4.1–1, item 21 and associated bases, does not create the possibility of a new or different kind of accident than any accident already evaluated. The additional function added to the P–8 Permissive does not result in any event previously deemed incredible being made credible. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this change. In addition, the safety functions of safety related systems and components, which are related to accident mitigation, have not been altered. Therefore, the possibility of a new or different kind of accident is not created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The addition of the reactor trip on turbine trip at [greater than or equal to] 50% to the P–8 Permissive function, versus its current setting of [greater than or equal to] 10% and associated changes to TS Sections 2.3. l.C.(3), 2.3.2.A, 2.3.2.B, Table 3.5–2, item 12, Table 4.1–1, item 21 and the associated bases, will have no effect on the availability, operability or performance of the safety-related systems and components and does not affect the plant TS requirements. The current licensing basis safety analyses for IP3 remain bounding with the modification to the P–8 Permissive function; therefore, the margin of safety as defined in the TS is not reduced. The change to the IP3 TS does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 28, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSs) proposes to reduce the number of Emergency Diesel Generators (EDGs) required to be operable during cold shutdown from 2 to 1 under certain conditions.

Basis for proposed no significant hazards consideration determination: 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) Does the proposed license amendment involve a significant increase in the

probability or consequences of an accident previously [evaluated]?

Response

No. The equipment, which is affected by the proposed Technical Specification change, is not an initiator to those accidents postulated to occur during Cold Shutdown or Refueling operating conditions. A comprehensive systems review and EDG loading electrical analysis has demonstrated the ability of those shutdown support systems, necessary to provide safe shutdown needs, to perform their accident mitigation functions for the postulated accidents during Cold Shutdown and Refueling conditions. One EDG can support the necessary electrical loads required in Cold Shutdown and Refueling in the event of postulated accidents along with a LOOP [loss of offsite power] in the time frame required to prevent reactor core/cavity/SFP [spent fuel pool] heatup concerns. This EDG support relies upon existing plant designed manual closure of 480VAC EDS [electrical distribution system] bus tie breakers to allow a single EDG to pick up other 480VAC EDS bus loads, such as supplying an RHR [residual heat removal] pump and SFP cooling pump, located on 480VAC EDS buses 3A, 5A, or 6A. Together, operability of the required offsite circuit(s) and one EDG ensures the availability of sufficient AC sources to operate the unit in a safe manner and to mitigate the consequences of postulated accidents during shutdown (e.g., Fuel Handling Accidents). Action statements provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG power supply not be available. These Action Statements are similar to those in the STS [Standard Technical Specifications]. Therefore, the proposed license amendment (i.e., changes to 3.7.F.4 and the added sections of 3.7.F.5 & 3.7.F.6) does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

No. The proposed license amendment does not involve any physical changes to plant systems or component set points. The use of 480VAC EDS bus tie breakers to power loads from an energized 480VAC bus is part of present plant design and included within the present LOOP Off-Normal operating procedures when the reactor is in Cold Shutdown operating conditions. As discussed in the Standard Technical Specifications, NUREG 1431, during plant shutdown with one EDG, it is not required to assume a single failure and concurrent loss of all offsite or all onsite power. Worst case bounding events are deemed not credible in Cold Shutdown and Refueling conditions because the energy contained within the reactor pressure boundary, reactor coolant temperature and pressure, and the corresponding stresses result in the probabilities of occurrence being significantly reduced or eliminated, and ultimately result in minimal consequences. The lone EDG is capable of accepting and starting required loads within the assumed loading sequence intervals and continue to operate until offsite power can be provided to the 480VAC EDS buses. Action statements provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG power supply not be available. These action statements are similar to those in the STS. Therefore, the proposed license amendment (i.e., changes to 3.7.F.4 and added sections 3.71.5 & 3.7.F.6) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

No. The electrical power system specifications support the equipment required to be operable, commensurate with the current level of safety, including the equipment requiring an EDG backed power source. The design review results demonstrate that operation in the conditions of Cold Shutdown and Refueling, in accordance with the proposed Technical Specification change, is acceptable from an accident mitigation standpoint. The basic system functions in Cold Shutdown and Refueling operating conditions are not changed. One EDG can supply the necessary electrical power needs during these plant operating conditions, and in the time frame required to prevent reactor core/cavity/SFP heatup concerns, with sufficient ''kw loading'' to spare. The analysis conducted shows that the systems are capable of performing their design basis functions. Applicable safety analysis in the Standard Technical Specifications, NUREG 1431, discusses these system requirements as well (i.e., it is not required to assume a single failure and concurrent loss of all offsite or all onsite power). Action statements, similar to those in the Standard Technical Specifications, provide prompt, specific guidance to ensure sufficiently conservative plant response should the expected EDG power supply not be available. On this basis, the proposed license amendment (i.e., changes to 3.7.F.4 and added sections 3.7.F.5 & 3.7.F.6) does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 29, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to change the allowable indicated control rod misalignment.

Basis for proposed no significant hazards consideration determination: 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) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

No. Based on the Westinghouse evaluation in WCAP–14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 licensing basis accident analysis. Increasing the magnitude of allowed control rod indicated misalignment (in section 3.10.5) is not a contributor to the mechanistic cause of an accident evaluated in the FSAR [Final Safety Analysis Report]. Neither the rod control system nor the rod position indicator function is being altered. Therefore, the probability of an accident previously evaluated has not significantly increased. Because design limitations continue to be met, and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid.

Therefore, the consequences of an accident previously evaluated will not be significantly increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

No. Based on the Westinghouse evaluation in WCAP–14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 licensing basis accident analysis. Increasing the magnitude of allowed control rod indicated misalignment is not a contributor to the mechanistic cause of any accident. Neither the rod control system nor the rod position indicator function is being altered. Therefore, an accident which is new or different than any previously evaluated will not be created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

No. Based on the Westinghouse evaluation in WCAP–14668, the Authority has

determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 licensing basis accident analysis based on the changes to safety analyses input parameter values as discussed in WCAP–14668. Since the evaluations in Section 3.0 of WCAP–14668 demonstrate that all applicable acceptance criteria continue to be met, the proposed change will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 29, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 (IP3) Technical Specifications (TSs) proposes to change the allowable indicated control rod misalignment.

Basis for proposed no significant hazards consideration determination: 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) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

No. Based on the Westinghouse evaluation in WCAP–14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 licensing basis accident analysis. Increasing the magnitude of allowed control rod indicated misalignment (in Section 3.10.5) is not a contributor to the mechanistic cause of an accident evaluated in the FSAR [Final Safety Analysis Report]. Neither the rod control system nor the rod position indicator function is being altered. Therefore, the probability of an accident previously evaluated has not significantly increased. Because design limitations continue to be met, and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid.

Therefore, the consequences of an accident previously evaluated will not be significantly increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

No. Based on the Westinghouse evaluation in WCAP–14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 licensing basis accident analysis. Increasing the magnitude of allowed control rod indicated misalignment is not a contributor to the mechanistic cause of any accident. Neither the rod control system nor the rod position indicator function is being altered. Therefore, an accident which is new or different than any previously evaluated will not be created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response

No. Based on the Westinghouse evaluation in WCAP–14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 licensing basis accident analysis based on the changes to safety analyses input parameter values as discussed in WCAP–14668. Since the evaluations in Section 3.0 of WCAP–14668 demonstrate that all applicable acceptance criteria continue to be met, the proposed change will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 22, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7.1.6, ''Atmospheric Steam Relief Valves,'' and add a new TS for atmospheric steam relief valve instrumentation, to ensure that the automatic feature of the steam generator power-operated relief valve (i.e., atmospheric steam relief valves) remains operable during Modes 1 and 2. In addition, the proposed change would add an associated surveillance requiring that a channel calibration on the steam generator power-operated relief valve be performed every 18 months.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The methodologies used in the accident analyses remain unchanged. The automatic actuation of the Steam Generator Power Operated Relief Valves is not a new design feature. The effects of the inadvertent opening of a Steam Generator Power Operated Relief Valve are currently analyzed as described in Section 15.1.4 of the Updated Final Safety Analysis Report. The radiological consequences for the Small Break Loss of Coolant Accident (SBLOCA) event presented in the Updated Final Safety Analysis Report remain unchanged. The calculated Peak Clad Temperature is 1849°F remaining substantially below the 2200°F acceptance limit of 10 CFR 50.46. Although the manual control specification is relocated from Specification 3.7.1.6 to the new instrumentation specification, the limiting condition for operation, applicability and action statements for manual controls remain unchanged. Therefore no increase in the probability or consequences of any accident previously evaluated will occur.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The automatic actuation of the Steam Generator Power Operated Relief Valves is not an accident initiator for the SBLOCA event. The automatic actuation of the Steam Generator Power Operated Relief Valves currently exists at the South Texas Project and is not a new design feature. The description of the Steam Generator Power Operated Relief Valves currently exists in the Updated Final Safety Analysis Report. This change does not represent a change to the facility and does not affect the safety functions and reliability of systems, structures, or components in any new manner. Operating procedures have a temporary administrative control to ensure the automatic actuation of the Steam Generator Power Operated Relief Valves remains operable in Modes 1 and 2. This condition will become permanent with the approval of this Technical Specification Amendment proposal. Although the manual control specification is relocated from Specification 3.7.1.6 to the new instrumentation specification, the limiting condition for operation, applicability and

action statements for manual controls remain unchanged. Since the automatic actuation of the Steam Generator Power Operated Relief Valves is not an accident initiator and is not a new design feature to the facility, no possibility exists for a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change results in the calculated Peak Clad Temperature of 1849°F remaining well below the acceptance limit of 10 CFR 50.46 and comparable to the results currently described in the Updated Final Safety Analysis Report. Therefore, the change does not involve a significant reduction in a margin of safety.

Based on the above, the South Texas Project has evaluated the proposed Technical Specification change and determined it does not represent a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority (TVA), Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 19, 1999 (TS 99–01).

Brief description of amendments: The proposed amendments would change the SQN Technical Specifications (TS) for Operating Licenses DPR–77 (Unit 1) and DPR–79 (Unit 2) by relocating TS Sections 3.8.3.1, 3.8.3.2, and 3.8.3.3 to the SQN Technical Requirements Manual. These sections provide requirements for electrical overcurrent isolation devices.

Basis for proposed no significant hazards consideration determination: 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:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to the TS relocates the requirements for SQN's electrical equipment protective devices without changing the current requirements. TVA does not consider these devices to be the source of any accident; therefore, this administrative relocation of the requirements will not increase the possibility of an accident. SQN's electrical equipment protective devices will continue to provide fault protection for circuits and equipment. Changes to the relocated requirements will be processed, in accordance with 10 CFR 50.59, to ensure changes are not implemented that would reduce the functionality or introduce an unreviewed safety question to SQN's electrical equipment devices. Therefore, the proposed relocation of the TS requirements for electrical equipment protective devices will not increase the consequences of an accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

SQN's electrical equipment protective devices ensure proper operation of plant equipment. These devices are not associated with accident mitigation or previously evaluated accidents and would not be the initiator of any new or different kind of accident. The proposed change does not alter the current functions of these devices, therefore, this proposed change will not create the possibility of a new or different kind of accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The requirements for SQN's electrical equipment protective devices are unchanged by the proposed relocation of the requirements to the SQN Technical Requirements Manual. The function of these devices and the surveillance testing to ensure operability of these devices remains unchanged. Any future changes to these requirements will be evaluated, in accordance with 10 CFR 50.59, to ensure acceptability and NRC review as required. Accordingly, the proposed change will not result in a reduction in a margin of safety.

The NRC 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.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: December 16, 1997, as supplemented August 31, and December 7, 1998.

Brief description of amendment: This amendment changes Technical Specification 4.7.1.2.1.a.2.a, Auxiliary Feedwater (AFW) System Surveillance Requirements, by changing the differential pressure and flow requirements of the steam turbine-driven AFW pump to allow testing of the pump at a lower speed.

Date of issuance: April 1, 1999.

Effective date: April 1, 1999.

Amendment No.: 87.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1998 (63 FR 6981).

The August 31, and December 7, 1998, submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: September 1, 1998, as supplemented on March 19, 1999.

Brief description of amendment: This amendment changes Technical Specification (TS) ¾.9.11, ''Water Level—New and Spent Fuel Pools,'' and its associated Bases by requiring 23 feet of water above the top of fuel rods within irradiated fuel assemblies seated in the storage racks.

Date of issuance: April 8, 1999.

Effective date: April 8, 1999.

Amendment No.: 88.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1998 (63 FR 50935).

The March 19, 1999, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 25, 1998.

Brief description of amendments: The amendments revised the Technical Specifications (TS) to support on-line replacement of the Braidwood, Unit 2, vital batteries.

Date of issuance: March 26, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 99 and 99.

Facility Operating License Nos. NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9185).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: January 21, 1999.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by relocating TS Section ¾.6.I, ''Primary System Boundary-Chemistry'' and associated bases to the Updated Final Safety Analysis Report (UFSAR) and to applicable plant procedures.

Date of issuance: March 31, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 187 and 184.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9186).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 28, 1999.

Brief description of amendments: The amendments revised Technical Specifications Section 3.7.13, ''Fuel Handling Ventilation Exhaust System,'' and associated Bases to correct discrepancies between the current design and this section.

Date of issuance: March 26, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–176; Unit 2–168.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9187).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: October 15, 1998, as supplemented December 15, 1998, and January 11 and 21, 1999.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to change the heatup, cooldown, and inservice test limitations for the reactor coolant system of each unit to a maximum of 26 effective full-power years. The amendments also revise the TSs for low temperature overpressure protection to reflect the revised pressure-temperature limits of the reactor vessels.

Date of Issuance: March 30, 1999.

Effective date: As of the date of issuance to be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1–302; Unit 2–302; Unit 3–302.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1998 (63 FR 66592).

The December 15, 1998, and January 11 and 21, 1999, letters provided clarifying information that did not change the scope of the original **Federal Register** notice and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: October 15, 1998, as supplemented

December 14, 1998, February 18, 1999, and February 23, 1999.

Brief description of amendments: These amendments made several changes that are administrative in nature. The changes (1) made editorial changes that delete obsolete material or material adequately described elsewhere, changed action statement numbers, updated technical specification (TSs) index pages, and made changes to be consistent with the guidance provided in the improved standard technical specifications for Westinghouse reactors (NUREG–1431, Revision 1); (2) deleted reporting requirements that are duplicated in various sections of Title 10 of the Code of Federal Regulations; and (3) relocated the requirement for meteorological monitoring instrumentation from the TSs to the Licensing Requirements Manual.

The February 18, 1999, and February 23, 1999, letters withdrew a portion of the amendment request that would have deleted the description of the site exclusion boundary from the TSs. The description of the site exclusion boundary will remain in the TS.

Date of issuance: March 26, 1999.

Effective date: Units 1 and 2, as of date of issuance, to be implemented within 60 days.

Amendment Nos.: 220 and 97.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications and licenses.

Date of initial notice in **Federal Register:** November 18, 1998 (63 FR 64111).

The December 14, 1998, February 18, 1999, and February 23, 1999, letters did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: March 10, 1997, as supplemented July 28, 1997, September 17, 1997, April 30, 1998, January 29, 1999, and February 26, 1999.

Brief description of amendment: The amendment modifies Technical Specification 3/4.4.5, ''Steam Generators,'' and its associated Bases and adds a new license condition to Appendix D to allow repair of steam generator tubes by installation of sleeves developed by ABB Combustion Engineering. In addition, the amendment deletes the option for using the kinetic sleeving methodology previously approved for use at Beaver Valley Power Station, Unit 2.

Date of issuance: March 26, 1999.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 98.

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** April 23, 1997 (62 FR 19829).

The July 28, 1997, September 17, 1997, April 30, 1998, January 29, 1999, and February 26, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the April 23, 1997, **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 12, 1999, supersedes application dated May 31, 1996.

Brief description of amendment: The amendment adds an additional required action to the Limiting Condition for Operation (LCO) 3.9.1, ''Refueling Equipment Interlocks,'' of the RBS Technical Specifications. The additional action will allow an alternative to the current action for one or more inoperable refueling equipment interlocks. The current action is to ''suspend in-vessel fuel movement with equipment associated with the inoperable interlock(s).'' The alternative action will be to (1) insert a control rod withdrawal block, and (2) verify all control rods are fully inserted in core cells containing one or more fuel assemblies. The amendment also revised the Bases for LCO 3.9.1 actions to describe the alternative action.

Date of issuance: March 26, 1999.

Effective date: March 26, 1999.

Amendment No.: 104.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1999 (64 FR 6695).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 30, 1998.

Brief description of amendment: The amendment changes Technical Specification 3.1.2, ''Liquid Poison System,'' and its associated Bases to correct the required concentration and volume of boron solution.

Date of issuance: April 2, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1998 (63 FR 71970).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 1, 1998, as supplemented May 29, June 26, and August 4, 1998.

Brief description of amendment: The amendment revises the Millstone Unit 3 final safety analysis report (FSAR) by adding a new sump pump subsystem to address groundwater inleakage through the containment basemat.

Date of issuance: March 17, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days from the date of issuance.

Amendment No.: 168.

Facility Operating License No. NPF–49: Amendment authorized changes to the FSAR.

Date of initial notice in **Federal Register:** April 22, 1998 (63 FR 19974).

The May 29, June 26, and August 4, 1998, letters provided clarifying information that did not change the scope of the April 1, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment, state consultation, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 17, 1999.

No significant hazards consideration comments received: No public comments received. A petition to intervene was received from the Citizens Regulatory Commission that was dismissed and terminated by the NRC Atomic Safety Licensing Board (LBP–98–22).

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 4, 1998, as revised September 29, 1998.

Brief description of amendments: The amendments revise the Technical Specifications surveillance requirements concerning secondary containment doors.

Date of issuance: April 7, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendments Nos.: 227 and 230.

Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 14, 1998 (63 FR 38202).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 22, 1998.

Brief description of amendment: This amendment revises Technical Specification (TS) 4.8.2.1.b.3 to increase the minimum battery electrolyte temperature limit from 60°F to 72°F. This change resolves a discrepancy in the electrolyte temperature assumed in the Class 1E battery sizing calculations versus the limit specified in the TSs.

Date of issuance: March 25, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 118.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66602).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: December 4, 1998.

Brief description of amendments: The amendments make two changes to the TS. The first change revises the Unit 1 TS Section 2.1.1.2 to delete the footnote that specifies that the Safety Limit Minimum Critical Power Ratios are for Cycle 18 only. The second change revises the TS for both units by deleting Section 5.6.5.b.2) and incorporating Section 5.6.5.b.1) into Section 5.6.5.b.

Date of issuance: April 1, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–215; Unit 2–156.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4161).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 15, 1998, as supplemented by letter dated November 11, 1998.

Brief description of amendments: The amendments change the Vogtle Electric Generating Plant Unit 1 and 2 Facility Operating Licenses to delete or modify certain license conditions that have become obsolete or inappropriate. In addition, the Technical Specifications and Bases are reissued to reflect new word processing software.

Date of issuance: March 26, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–107; Unit 2–85.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised Facility Operating Licenses and the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66602).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of applications for amendment: October 31, 1997, as supplemented by letter dated September 29, 1998, and application dated July 30, 1998.

Brief description of amendment: The amendment revised Tables 3.3–3, 3.3–4, and 4.3–2 of the technical specifications regarding the engineered safety feature actuation system (ESFAS) Functional Unit 6.f, ''Loss of Offsite Power—Start Turbine-Driven Pump,'' by establishing separate requirements for the analog and digital portions of the associated circuit. The amendment also adds a note to TS Table 4.3–2 to clarify that the verification of time delays associated

with ESFAS Functional Units 8.a and 8.b, ''Loss of Power,'' is only performed as part of the channel calibration.

Date of issuance: April 2, 1999.

Effective date: April 2, 1999, to be implemented within 30 days of the date of issuance.

Amendment No.: 130.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69348).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Elmer Ellis Library, University of Missouri, Columbia Missouri 65201.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: November 18, 1998, as supplemented with additional information by letters dated March 1, 1999, and March 9, 1999.

Brief description of amendment: The amendment revises the pressure/temperature limits and the low-temperature overpressure protection requirements in the facility technical specifications.

Date of issuance: April 1, 1999.

Effective date: April 1, 1999.

Amendment No.: 144.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998. (63FR71978)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Dated at Rockville, Maryland, this 14th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–9839 Filed 4–20–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23785; 812–11218]

American Capital Strategies, Ltd.; Notice of Application

April 14, 1999.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, American Capital Strategies, Ltd., requests an order approving its 1997 Disinterested Director Stock Option Plan (the ''Plan'') and the grant of certain stock options under the Plan.

FILING DATES: The application was filed on July 10, 1998 and amended on November 12, 1998. Applicant has agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 10, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, c/o Samuel A. Flax, Esquire, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004–1206.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (Tel. 202–942–8090).

Applicant's Representations

1. Applicant is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant's primary business is making loans and investments in small and medium-sized companies. Applicant's investment decisions are made by a board of directors (''Board'') based on recommendations of a loan approval committee comprised of senior management. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Plan, which provides for the grant of options to purchase shares of applicant's common stock to directors who are neither officers nor employees of applicant (''Non-Employee Directors'').[2] Applicant has a nine member Board, the majority of whom are not ''interested persons'' as defined in section 2(a)(19) of the Act. On November 6, 1997, the Board adopted the Plan subject to approval by the Commission and applicant's shareholders. On May 14, 1998, applicant's shareholders approved the Plan. The Plan will not become effective until the date that a Commission order is issued on the application.

3. The Plan provides that each Non-Employee Director will receive an initial grant of options (together with any options issued later under the Plan, ''Options'') to acquire 15,000 shares of applicant's common stock. The Options will vest over a three-year period in 5,000 share increments. Five of the Non-Employee Directors were directors when the Board adopted the Plan. These five Non-Employee Directors will have 5,000 Options vest on November 6 of each of the three years following November 6, 1997. The sixth Non-Employee Director became a director and received an initial grant of 15,000 Options on August 8, 1998. The sixth director's Options will vest in 5,000 increments on August 8th of each of the three following years. Any Options granted prior to the issuance of a Commission order that otherwise would have vested

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Each Non-Employee Director receives $10,000 per year for each year they serve as a director and $1,000 for each Board or committee meeting attended, plus reimbursement of related expenses.

will vest on the date that the Commission issues an order on the application. The Plan provides that a maximum of 150,000 shares of applicant's common stock may be issued to Non-Employee Directors as a group. Following the initial grants, 60,000 shares of applicant's stock would remain eligible for grants under the Plan. Future grants would be made by a committee of the Board, none of whose members are eligible to participate in the Plan (''Committee''). The Committee has plenary authority to determine, subject to the Plan, the granting of future Options. Under the Plan, no single Non-Employee Director may receive Options to purchase more than 25,000 shares of applicant's common stock.

4. Under the terms of the Plan, the exercise price of the initial grants will be the current market price of applicant's common stock on the date that a Commission order is issued on the application, and on the date of issuance of any Options thereafter. The Options expire ten years from the date of grant and may not be assigned or transferred other than by the laws of descent and distribution. In the event of the death or disability of a Non-Employee Director during the Director's service, unexercised Options immediately become exercisable and may be exercised for a period of three years following the date of death (by the Director's personal representative) or one year following the date of disability, but in no event after the respective expiration dates of such Options. In the event of the termination of a Non-Employee Director for cause, any unexercised Options terminate immediately. If a Non-Employee Director's service is terminated for any reason other than by death, disability, or for cause, the Options may be exercised within one year immediately following the date of termination, but in no event later than the expiration date of such Options.

5. As of March 16, 1999, applicant had outstanding 11,106,105 shares of common stock. Applicant's officers and employees, including employee directors, are eligible to receive options under Applicant's other stock option plan (under which Non-Employee Directors are not entitled to participate) (''Other Plan''). A maximum of 1,800,252 shares, or 16.2% of applicant's outstanding common stock, may be issued under the Other Plan, of which 1,637,778 shares, representing 14.7% of applicant's outstanding common stock, are subject to granted options. Applicant also has outstanding 442,751 warrants issued to Friedman, Billings, Ramsey & Co. in connection with applicant's initial public offering. Each warrant is exercisable for one share of applicant's common stock, representing 4% of applicant's outstanding common stock.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(C) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the Plan would comply with all of the requirements of section 61(a)(3)(B) of the Act. Applicant states in support of its application that the Board actively oversees applicant's affairs, applicant relies extensively on the judgment and experience of the Board, and that Non-Employee Directors provide advice to applicant on operational issues, underwriting policies, credit policies and asset valuation and strategic direction, as well as serving on committees. Applicant believes that the Plan will provide additional incentives to Non-Employee Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant also believes that the Options will provide significant at-risk incentives to the Non-Employee Directors, thereby further ensuring close identification of their interests with those of the applicant and its shareholders. Applicant asserts that by providing incentives such as Options, applicant will be able to maintain continuity in the Board's membership and to attract and retain the highly experienced and skilled professionals who are critical to applicant's success as a BDC.

4. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Options would not be immediately exercisable and that they vest over a three-year period. Applicant asserts that if the current Non-Employee Directors remain in office for a period of three years and exercise all of the Options granted to them under the Plan, applicant would issue 90,000 shares of common stock representing .81% of the applicant's outstanding common stock. Applicant also states that the total number of shares of common stock issuable under the Plan to Non-Employee Directors represents approximately 1.4% of applicant's outstanding common stock. Applicant asserts that the Options will have value only to the extent that applicant's market value increases above the exercise price of the Options and that, given the small amount of common stock issuable upon exercise of the Options, the exercise of the Options pursuant to the Plan would not have a substantial dilutive effect on the net asset value of applicant's common stock. Applicant states that the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights upon approval of the Plan would represent 19.6% of applicant's outstanding voting securities. To the extent that applicant has authorized a number of options for future issuance that, if granted currently, would exceed the limits imposed by section 61(a)(3)(C) of the Act, applicant represents that no grants will be made in excess of the

percentage limitations set forth in section 61(a)(3)(C) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9910 Filed 4–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (K–V Pharmaceutical Company, Class A Common Stock, Par Value $.01 Per Share, and Class B Common Stock, Par Value $0.1 Per Share) File No. 1–9601

April 14, 1999.

K–V Pharmaceutical Company (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the securities specified above (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Securities have been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on March 25, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading in the Securities on the NYSE commenced at the opening of business on March 25, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Exchange and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

In making the decision to withdraw its Securities from listing on the Amex, the Company determined the following: (a) that listing on the NYSE would enhance the overall value of the Company's Securities and provide enhanced trading and other services to the Company's stockholders; and (b) that withdrawal of such Securities from listing on the Amex would avoid both the direct and indirect costs arising from maintaining dual listings, as well as the resultant division of the market for such Securities.

The Company's application relates solely to the withdrawal of the Securities from listing on the Amex and shall have no effect upon the continued listing of the Securities on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before May 5, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9907 Filed 4–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (PolyMedica Corporation, Common Stock, $.01 Par Value Per Share, and Preferred Stock Purchase Rights); File No. 1–13690

April 14, 1999.

PolyMedica Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company have been listed for trading on the Amex and on the Nasdaq National Market (''Nasdaq''). Trading of the Company's Securities on the Nasdaq commenced at the opening of business on January 11, 1999. As a result of listing its Securities on the Nasdaq, the Company determined to withdraw its Securities from listing on the Amex.

The Company has complied with the rules of the Amex by notifying the Exchange of its intention to withdraw the Securities from listing on the Exchange and by delivering to the Exchange a certified copy of the resolution adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

Any interested person may, on or before May 5, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9908 Filed 4–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unocal Corporation, Common Stock, Par Value $1.00, and Associated Preferred Stock Purchase Rights) File No. 1–8483

April 14, 1999.

Unocal Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Chicago Stock Exchange, Incorporated (''CHX'') and

the Pacific Exchange, Inc. (''PCX'') (collectively, the CHX and the PCX shall be referred to herein as the ''Exchanges'').

The reasons cited in the application for withdrawing the Securities from listing and registration on the Exchanges include the following:

The Securities of the Company have been listed for trading on the CHX, the PCX and the New York Stock Exchange, Inc. (''NYSE''). The Board of Directors of the Company has authorized withdrawing the Securities from the CHX and the PCX in order to eliminate the costs associated with such listings. These costs include both annual maintenance fees for listed shares and fees for listing additional shares.

The Company has complied with the rules of each Exchange by filing with them certified copies of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Exchanges and by setting forth in detail to the Exchanges the reasons for the proposed withdrawal, and the facts in support thereof.

Both CHX and the PCX have informed the Company that they have no objections to the Company's application to withdraw its Securities from listing on the Exchanges.

The Company's application relates solely to the withdrawal of its Securities from listing on the CHX and the PCX and shall have no effect upon the continued listing of the Securities on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and with the NYSE.

Any interested person may, on or before May 5, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9909 Filed 4–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Viacom Inc., Class A Common Stock, $.01 Par Value, and Class B Common Stock, $.01 Par Value) File No. 1–9553

April 15, 1999.

Viacom Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the securities specified above (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Securities have been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A filed with the Commission which became effective on April 1, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading in the Securities on the NYSE commenced at the opening of business on April 8, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the Exchange and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Amex has in turn informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

In making the decision to withdraw its Securities from listing on the Amex, the Company determined that it would be in the Company's best interests to withdraw its Securities from listing on the Amex in order to list them on the NYSE.

The Company's application relates solely to the withdrawal of the Securities described above from listing on the Amex and shall have no effect upon the continued listing of the Securities on the NYSE, nor shall it have any effect on the continued listing of the Company's other securities on the Amex, including its Five-Year Warrants expiring July 7, 1999, its 6.75% Senior Notes due 2003, its 7.75% Senior Notes due 2005, its 8% Exchangeable Subordinated Debentures due 2006, and its 7.625% Senior Debentures due 2016. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the Amex, as well as the NYSE.

Any interested person may, on or before May 6, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9944 Filed 4–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41287; File No. SR–NASD–99–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Size of the Nasdaq Listing and Hearing Review Council

April 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously granting approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to increase the maximum size of the Nasdaq Listing and Hearing Review Council (''Review Council'') to 18 members and increase the minimum number of non-industry members on the Review Council to five. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Bylaws of The Nasdaq Stock Market, Inc.

Sec. 5.2 Number of Members and Qualifications

(a) The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no more than [11] *18* members, of which not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. The Nasdaq Listing and Hearing Review Council shall include at least [three] *five* Non-Industry members.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposal is designed to address the increase in the workload of the Review Council. The number of listing and policy matters pending before the Review Council has significantly increased over the last year. This increased workload is challenging the ability of the Review Council to effectively discharge its duties. Accordingly, Nasdaq is proposing to increase the maximum size of the Review Council to 18 members. The Review Council will continue to be a balanced committee, with not more than 50 percent of its members engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. Furthermore, the proposal provides for the minimum percentage of non-industry members on the Review Council to remain virtually the same.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and in general, to protect investors and the public interest. Increasing the size of the Review Council, while maintaining it as a balanced committee, will permit the Review Council to remain focused on issues that may raise investor protection concerns and to act rapidly on such issues when necessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–18 and should be submitted by May 12, 1999.

IV. Commission's Findings and Other Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission believes the proposal is consistent with Section 15A(b)(6) and (6)(11).[6] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and in general, to protect investors and the public interest.[7] Section 15A(b)(11) requires, among other things, that the rules of a national securities association include provisions governing the form and content of quotations, and that such rules must be designed to promote orderly procedures for collecting, distributing, and publishing quotations.[8]

The Commission finds that increasing the number of members on the Review Council should provide for the efficient and timely execution of the Review Council's duties (*e.g.*, establishing listing standards and making listing determinations).[9] The Commission believes that this proposal should

[3] Amendment No. 1 was received by the Commission on April 8, 1999, the substance of which is incorporated into this notice. Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated April 7, 1999 (''Amendment No. 1'').

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] In approving this proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6) and (b)(11).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78*o*–3(b)(11).

[9] The Nasdaq submits that the proposed rule change is immediately necessary given the increased workload facing the Review Council. *See*, Amendment No. 1.

reduce workloads, expedite the listing process and facilitate capital formation by allowing issuers quicker access to capital. The Nasdaq proposal should also protect investors and the public interest by ensuring that delisting decisions and policy determinations involving listing standards are addressed promptly. In addition, the Commission notes that the proposed rule change maintains virtually the same percentage of industry members versus non-industry members on the Review Council, which should prevent any unfair discrimination in the execution of the Review Council's duties. For the foregoing reasons, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–99–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–9943 Filed 4–20–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3028]

Notice of Meetings; United States International Telecommunication Advisory Committee (ITAC); Telecommunication Standardization Sector (ITAC–T) National Committee and Study Groups A & D; Interamerican Telecommunication Commission (CITEL) Ad Hoc Committee

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC) and its committees and Study Groups in the Telecommunication Standardization, Telecommunication Development Sectors, and CITEL ad hoc committee for May and June 1999. The purpose of the Committee and its Study Groups is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization and development. All meetings will be held at the Department of State, 2201 ''C'' Street, NW, Washington, D.C.

The ITAC will meet from 9:30 to 1:00 on Wednesday, May 5 (Room 1205), May 12 (Room 1205), May 19 (Room 1406), May 26 (Room 1205), June 2 (Room 1205), and June 9 (Room 1205), 1999, to complete preparations for the ITU Council meeting in June 1999.

The ITAC–T National Committee will meet from 9:30 to 4:00 on May 26, 1999, (Room 1207). The ITAC–T will review activities resulting from the ITU Telecommunication Sector Advisory Group (TSAG) meeting in April 1999.

ITAC–T Study Group A will meet from 9:30 to 4:00 on May 19, 1999, (Room 1205). Study Group A will complete preparations for ITU Study Groups 2 and 3.

ITAC–T Study Group D will meet from 9:30 to 4:00 on May 20, 1999, to prepare for ITU Study Group 8 and 16 meetings.

The ITAC ad hoc CITEL committee will meet May 6, 1999 in Room 4517 from 9:30 to 12:30 to prepare for the next Permanent Consultative Committee I meeting.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC, ITAC–T National Committee and Study Groups A & D meetings should send a fax to (202) 647–7407 or email to *williamscd@state.gov* not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC, ITAC–T, National Committee, Study Group and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the ''C'' Street Main Lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: April 14, 1999.

Marian R. Gordon,

Information and Telecommunication Standardization, U.S. Department of State.

[FR Doc. 99–9982 Filed 4–20–99; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4620]

Oil Pollution Act of 1990 (OPA 90) Phase-Out Requirements for Single Hull Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of policy.

SUMMARY: In a notice published on November 16, 1998, the Coast Guard requested comments on whether a single hull tank vessel, converted to include double sides or a double bottom, should be accepted as a different hull design when applying the tank vessel phase-out dates under the Oil Pollution Act of 1990 (OPA 90). This notice discusses the comments received and the Coast Guard's determination. The Coast Guard has decided that changing the hull configuration of an existing single hull tank vessel to a single hull tank vessel with double sides or a double bottom, after August 18, 1990, will not result in a change to the tank vessel's originally scheduled phase-out date as required by 46 U.S.C. 3703a.

DATES: This policy is effective April 21, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the Docket Management Facility, (USCG–1998–4620), U.S. Department of Transportation, Plaza level, room PL–401, 400 Seventh Street SW, Washington DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this policy, please contact Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, telephone 202–267–1053. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: The Coast Guard published a request for comments (63 FR 63768) on November 16, 1998. The notice encouraged interested persons to provide written comments, information, opinions and arguments on whether single hull tank vessels that were altered with double sides or a double bottom should be considered a different hull configuration for

determining their OPA 90 phase-out date. The comment period ended on January 15, 1999, and there were 32 submissions to the docket.

The Coast Guard held no public meeting on this request for comments. Two comments did request a public meeting, but the Coast Guard determined that the written comments in the docket adequately addressed the issues and that a public meeting would not be helpful in acquiring additional information.

Background

Section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101–380, August 18, 1990) (OPA 90) amended title 46, United States Code, by adding a new section 3703a. This section contains the double hull requirements and phase-out schedule for single hull tank vessels operating in U.S. waters. It requires an owner to remove a single hull tank vessel from bulk oil service on a specific date, depending on a vessel's gross tonnage, build date, and hull configuration. The phase-out schedule allows more years of service for single hull tank vessels configured to include double sides or a double bottom than for single hull tank vessels without these hull configurations.

The OPA 90 timetable for double hull requirements and phase-out schedule for single hull tank vessels are implemented in 33 CFR part 157, Appendix G. Both OPA 90 and our implementing regulations are silent on if, or when, a vessel owner can convert a single hull tank vessel to include double sides or a double bottom to qualify for a later phase-out date. As a result, some vessel owners have asked the Coast Guard to clarify the types of vessel conversions permitted and their associated phase-out dates.

In 1997, the Vessel Compliance Division replied to a question asking if a single hull tank vessel with wing cargo tanks reconfigured as segregated ballast tanks or void spaces to create double sides would qualify for a different OPA 90 phase-out date. They indicated that this type of conversion and an associated later phase-out date was acceptable provided that the modified tanks meet the double side dimension requirements applied to new tank vessels in 33 CFR 157.10d(c)(1). Converted double side segregated ballast tanks must also provide protection to the full extent of a vessel's cargo tank length. In 1998, we received another inquiry from the same source asking if hull conversions completed after a single hull tank vessel's original phase-out date qualified the vessel to reenter bulk oil service with a later phase-out date.

Recent inquiries by the maritime industry indicate a continued interest in the possibility of converting single hull tank vessels to include double sides or a double bottom to increase a vessel's operational life past its original OPA 90 phase-out date. In our November 16, 1998, request for comments, we asked for information to help us develop a clear policy on phase-out dates.

Summary of Comments

The comments fell into two clearly opposed groups on whether a single hull tank vessel could, after August 18, 1990, add double sides or a double bottom and use that alteration to change the vessel's category under § 3703a and thus have a later phase-out date.

The comments generally urged that the Coast Guard either—

- NOT ALLOW a single hull tank vessel converted with double sides or a double bottom after August 18, 1990, to be considered under a different category in § 3703a to result in later phase-out dates; or,
- ALLOW single hull tank vessels converted with double sides or a double bottom after August 18, 1990, to be considered under a different category in § 3703a that would result in a later phase-out date or a return to operation after the vessel's phase-out date.

Conversion to add double sides or a double bottom SHOULD NOT be allowed to change the phase-out date under OPA 90.

Nineteen comments stated that no change or extension of a single hull tank vessel phase-out date is allowed by OPA 90. These comments came from members of the U.S. Senate, U.S. House of Representatives, MARAD, the U.S. shipbuilding industry and associations, major ship companies and associations, environmental groups and individual citizens. One individual's comment included eighty (80) signatures supporting the ''* * * replacement of single hull oil tankers by double hull oil tankers * * *'' as scheduled by OPA 90. This group of nineteen comments offered the following reasons for their position:

- Congress intended OPA 90 to protect the environment from the increased risk of oil spills that were specifically linked to older single hull tank vessels.
- The phase-out schedule of § 3703a was deliberate and designed to ensure balance between the environment and the interests of the vessel owners. When developing the phase-out schedule, Congress took into account economic conditions; owner capital investment concerns; national oil transportation needs; shipbuilding resources availability; existing vessels and need for tank vessels which would operate in U.S. trade after OPA 90 became effective.
- The phase-out schedule was liberal, but, as with all of OPA 90, it does not provide for equivalence, waivers, or exemptions to its requirements.
- OPA 90 was intended to protect the environment from operational or accidental discharge of oil by removing older single hull tankers from service, as soon as possible, and by constructing new double hull tankers with the latest technology, design, and materials for safer operations, reducing damage to the environment.
- Allowing the continued operation of existing single hull tank vessels for longer periods of time than established by the OPA 90 schedule is not acceptable or fair to owners who have invested in the building of new double hull vessels.

Conversion to add double sides or a double bottom SHOULD be allowed to change the phase-out date under OPA 90.

Thirteen comments supported allowing a change of phase-out date after a single hull tank vessel converts to either double sides or a double bottom. These thirteen comments came from ship owners, oil companies, a shipyard company, a marine terminal company, and a licensed U.S. merchant mariner. This group of thirteen comments offered the following reasons for their position:

- There is no language in OPA 90 or U.S. regulations that prohibits a conversion of a single hull tank vessel to add double sides or a double bottom from being considered under a different category in § 3703a for the additional operating years allowed for that hull configuration.
- If Congress had intended not to allow such a conversion of single hull tank vessels to be considered, they would have used the words ''vessels built with double sides or a double bottom,'' instead of ''vessels equipped with double sides or a double bottom.'' Not defining when the vessel had to be equipped with double sides or a double bottom, allows it to occur after the statute became effective (August 18, 1990).
- The acceptance of the alteration of an existing vessel's design is not considered a major conversion under 33 CFR 157.03. This also allows the ''natural action'' of single hull tank vessels, or a single hull tank vessel originally built with double sides or a double bottom, to be converted to a

complete double hull and meet the OPA 90 requirements. It provides an incentive to completely double hull an existing vessel and has been used by U.S. tanker and barge owners to convert their tank vessels to be compliant with the double hull standards.

• One comment pointed out that section 3606 of Pub. L. 105–85 halted the industry practice of reducing gross tonnage to extend the phase-out date. This comment suggested that if the Congress did not approve of a Coast Guard position to allow double sides or a double bottom modification, then they could take legislative action once again.

• Given the current market conditions and expectations for needs of transportation and supply of oil to the U.S., this issue will not effect an increase of shipyard orders for new double hull tank vessels, specifically built in U.S. shipyards for the Jones Act trade. The cost to build a U.S. Jones Act tanker is approximately three times the cost to build the same tanker in the foreign shipyard market.

• There may be short periods within the next five to ten years when there will be an insufficient number of tankers available to transport the Alaska North Slope (ANS) crude. ANS crude transportation needs are slowing on a schedule from approximately 1.3 million barrels a day in 1999, to approximately 460,000 barrels a day in 2015. Due to this slowing schedule for ANS crude, the phasing out of the existing tankers in the ANS operation (23 in service at this time) will shrink until only nine to eleven tank vessels will be needed to sustain ANS crude delivery to the west coast of the U.S. Many single hull tankers, or single hull tankers with double bottoms only, will phase-out in ANS trade and will not be replaced. The ability to extend a single hull tank vessel for up to five years will allow coverage of possible tonnage shortages during the reduction of the fleet and reduction of oil to be transported from Alaska.

• There is no increase of risk to the environment in allowing such conversions. Statements in the Congressional Record during the OPA 90 Congressional Conference and studies completed for the Coast Guard, support that double sides provide protection from a collision and a double bottom provides protection from a grounding.

Specific Questions

Comments, both supporting and opposing phase-out date changes, responded to the four specific questions in our November 16, 1998, **Federal Register** notice. The answers not already included in the general comments summary are enclosed below.

1. If the Coast Guard does not allow single hull tank vessels to qualify for later OPA 90 phase-out dates by converting the single hulls to single hulls with double sides or a double bottom, what would be the effect on U.S. oil transportation and supplies?

• There would be little to no effect on oil transportation in the U.S. as there were more than a sufficient number of tankers available and planned, to meet U.S. demands.

• Any extensions of the phase-out schedule would slow down the demand by owners to build new U.S. double hull tankers.

• Shortages of tanker tonnage may occur in the specialty class U.S. tramp tanker trade within the clean product market. This will raise tanker rates and the cost of oil to the consumer. Extensions of the phase-out schedule will moderate charter tanker rates and meet the shortages for tank vessels during these periods.

2. If single hull tank vessels which have passed their initial phase-out date could qualify for later phase-out dates, and reenter service by converting their single hulls with double sides or a double bottom, what would be the effect on U.S. oil transportation and supplies?

• There will be no impact on U.S. oil transportation or supplies.

• There will be a sufficient number of tankers for U.S. oil transportation.

• Older single hull tank vessels would become heavily relied upon, if their phase-out dates are extended, and no ready replacements of new double hull vessels would be built or be available, should the older converted single hull tank vessels be abruptly lost from service.

• There would not be enough tankers in the Jones Act trade and the population would be reduced from the 49 in operation now to 21. Allowing this small period of extension (5 years maximum), could be used by vessel owners to ensure that no shortfalls of needed tonnage would occur and moderate tanker charter rates.

• A phased out single hull tank vessel could be laid up, if not needed. If a future transportation need occurred, the vessel could be converted and brought back into trade until the transportation need subsided or the converted single hull tank vessel with double sides or a double bottom reached its changed phase-out date or January 1, 2015, which ever comes first. This option would be beneficial in the ANS trade.

3. If single hull tank vessels could qualify for later phase-out dates through these types of hull conversions, what would be the effect on the conversion of the tank vessel fleet to double hull tank vessels? Would there be an adverse impact on the marine environment?

• The U.S. environment would be adversely impacted by vessels not complying with the original OPA 90 phase-out schedule for single hull tankers.

• Allowing extension of the phase-out dates for converted single hull tank vessels reduces the incentive for double hull new buildings and slows the building of double hulls, advancing the average age and reducing the levels of safety in the existing tank vessel fleet.

• Allowing extensions of the phase-out dates would indefinitely delay the environmental benefit of the double hull tank vessels anticipated by Congress and the U.S. population, who have advocated the need for double hull tankers for twenty-five (25) years.

• The older converted single hull tank vessels use more fossil fuels than the newer double hull tank vessels, increasing the amount of hazardous air pollutants emitted into the atmosphere.

• Overall double hull conversions in the U.S. would be modestly impacted, with no impact to the environment. A converted single hull tank vessel offers a sensible alternative for short-term periods (5 years) of U.S. tonnage needs.

• Owners of vessels will naturally wait until the deadline before considering a double hull because at this time the economic situation does not support the cost involved.

• A single hull tank vessel having its side cargo tanks converted to segregated ballast tanks would provide a larger double side spacing than required of new double hulls, providing more protection to the environment.

4. Are there any other concerns regarding whether we should recognize a single hull tank vessel converted to include double sides or a double bottom as a different hull design when applying the vessel phase-out dates under OPA 90?

• Depending on the type of conversion to a single hull tanker, it could effect the gross tonnage of the tank vessel, imparting a change to the vessel's phase-out due to reduction of the vessel's gross tonnage from original admeasurement. This would extend the tank vessel's phase-out even later (possibly 7 to 8 years) from its original phase-out per § 3703a.

• The reconfiguration of oil cargo tanks could pose new operational risks; ballast tanks experience high corrosion rates accounted for in the design of new double hull tank vessels.

• The average age of the U.S. tanker fleet would increase. Older single hull

tankers would not be maintained, and become unsafe as they got older and closer to the extended phase-out date, making them a greater risk to the environment.

- Allowing the extension of the phase-out schedule by recognizing the conversion of single hull tank vessels under OPA 90 could be of strategic value to the U.S. in certain national security scenarios.
- Eliminating the conversion of single hull tank vessels could possibly reduce, rather than increase, shipyard activity in the U.S.
- For the U.S. tanker industry to succeed it is essential that the companies involved know that the rules and standards are clear, inherently stable and likely to stay that way for the foreseeable future. With investment decisions reaching out over 20 years, we should not make changes to the ground rules which could have catastrophic effects.
- Examination of this issue has been couched as an evaluation by a federal agency of the economics of the U.S. flag market. Such decisions should be left up to the Congress.
- There would be increasing difficulty in hiring qualified U.S. merchant seaman. When crew members lose jobs due to the phase-out of their vessels, their tendency is to migrate to fields outside the maritime field and not to return. Extensions of the phase-out schedules could assist keeping these seamen employed until vessel replacement is completed.

Discussion

OPA 90 and our implementing regulations in 33 CFR 157 require that tank vessels either convert to full double hull configuration or be removed from the carriage of oil in bulk service by the dates set out in 46 U.S.C. § 3703a. We have not, before today, established a policy on whether a single hull tank vessel could alter its hull configuration with a double bottom or double sides in order to change its OPA 90 phase-out date.

Previously, we had interpreted OPA 90 as not specifically precluding a change in phase-out date for tank vessels that reduced their gross tonnage. However, in section 3606 of Pub. L. 105–85, enacted on November 18, 1997, Congress added a new paragraph (e) to § 3703a. It effectively stopped the industry practice of using protectively located segregated ballast tanks to reduce a tank vessel's gross tonnage and change its phase-out date under OPA 90.

After a vessel's phase-out date, OPA 90 allows tank vessels without double hulls to continue to deliver oil until January 1, 2015, either to a deepwater port or in one of the four lightering zones we established in the Gulf of Mexico. (See 33 CFR 156.300.)

Many vessel owners, including American Heavy Lift, Maritrans, and Bouchard Transportation Services, have already modified, or are in the process of modifying, existing single hull tank barges or tankers with double hulls to meet the requirements of OPA 90.

Although a number of comments discussed possible shortages of tankers in the Alaska North Slope (ANS) crude trade, the Department of Energy does not anticipate such shortages in ANS operations. Further, there are Jones Act trade vessels currently trading foreign that could be employed in ANS operations, if needed.

While the comments contained a variety of responses both for and against a policy of allowing vessels to change their phase-out dates based on conversions after the effective date of OPA 90, most of these issues were considered by Congress when developing OPA 90. No comments cited immediate operational problems or pressing need to allow vessels to operate beyond their currently scheduled phase-out date.

The OPA 90 double hull requirements were intended to protect the environment from oil spills. The only amendment Congress has made to the OPA 90 phase-out schedule in § 3703a stopped the change of phase-out dates resulting from reductions in gross tonnage. By enactment of Pub. L. 105–85, Congress demonstrated its unwillingness to delay the OPA 90 schedule for the double hull requirement.

Policy

Based on all of the reasons set out above, the Coast Guard has decided that its policy should be consistent with the plain language of § 3703a and the intent of OPA 90. Therefore, changing the hull configuration of an existing single hull tank vessel to a single hull tank vessel with double sides or a double bottom, after August 18, 1990, will not result in a change to the tank vessel's originally scheduled phase-out date as required by § 3703a. This policy is effective immediately and applies to all tank vessels.

The Coast Guard will shortly open a rulemaking to make appropriate changes to the double hull regulations in 33 CFR part 157 and will revise Navigation and Vessel Inspection Circular No. 10–94 consistent with this policy.

Dated: April 15, 1999.

James M. Loy,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 99–9899 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 13, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on April 16, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28884.
Petitioner: Aero Sky.
Section of the FAR Affected: 14 CFR 145.37(b).
Description of Relief Sought: To continue to allow Aero Sky to hold a Federal Aviation Administration repair station certificate (certificate No. KQ7R556N) without having suitable permanent housing facilities for at least one of the heaviest aircraft within the weight class of the rating it holds.

Docket No.: 29469.
Petitioner: Astral Aviation, Inc. dba Skyways Airlines.
Section of the FAR Affected: 14 CFR 121.358(a).
Description of Relief Sought: To permit Skyway Airlines to begin proving flights in the Fairchild Dornier 328–300 aircraft without installation of an approved windshear escape flight guidance system.

Docket No.: 29479.
Petitioner: Skydive U, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To permit Skydive U, Inc. to allow non-student, foreign national parachutists to make international parachute jumps at Skydive U's facility without complying with the parachute equipment packing requirements of 105.43(a).

Docket No.: 29483.
Petitioner: Jackson Police Department.
Section of the FAR Affected: 14 CFR 61.195(g)(1) and 91.109(a).
Description of Relief Sought: To permit Jackson PD pilots in training to use public aircraft to log the aeronautical experience required by 61.39 to take the practical test for issuance of a pilot certificate and aircraft rating.

Docket No.: 29492.
Petitioner: Lynden Air Cargo.
Section of the FAR Affected: 14 CFR 121.344.
Description of Relief Sought: To permit Lynden Air Cargo to operate each of its four L382G Hercules aircraft (Registration Nos. N401LC, N402LC, N403LC, N404LC; Serial Nos. 4606, 4698, 4590, and 4763 respectively) without a digital flight data recorder as required under 121.344.

Dispositions of Petitions

Docket No.: 22706.
Petitioner: Bankair, Inc.
Sections of The FAR Affected: 14 CFR 135.225(e).
Description of Relief Sought/ Disposition: To permit Bankair pilots to operate Bankair aircraft at any U.S. military base that has adopted the criteria contained in the U.S. Standard for Terminal Instrument Procedures used for determining lower-than-standard departure minimums using takeoff visibility minimums that are less than 1 mile and equal to or greater than the landing visibility minimums established for those airfields. *GRANT, 4/15/99, Exemption No. 6661A*

Docket No.: 26478.
Petitioner: United States Air Force.
Section of the FAR Affected: 14 CFR 91.209(a) (1) and (2).
Description of Relief Sought/ Disposition: To permit the Air Force to conduct conternarcotics aircrew flight training operations in support of drug law enforcement and drug traffic interdiction, without lighted aircraft position or anticollision lights. *GRANT, 4/8/99, Exemption No. 5305C*

Docket No.: 28847.
Petitioner: Trans State Airline.
Section of The FAR Affected: 14 CFR 14 CFR 121.433(c)(1)(iii) and 121.441(a)(1)) & (b)(1)
Description of Relief Sought/ Disposition: To continue to permit TSA to combine recurrent flight and ground training and proficiency checks for TSA's flight crewmembers in a single annual training and proficiency evaluation program. *GRANT, 4/8/99, Exemption No. 63336A*

Docket No.: 29424.
Petitioner: Amerflight, Inc.
Section of The FAR Affected: 14 CFR 135.243.
Description of Relief Sought/ Disposition: To permit Ameriflight to allow its pilots in command to operate under instrument flight rules with a minimum of 800 hours of total flight time, including 400 hours of cross-country flight time and 75 hours of night flight time, in lieu of the flight-time requirements of 135.243. *DENIAL, 4/8/99, Exemption No. 6885.*

Docket No.: 29425
Petitioner: Popular Rotorcraft Association, Inc.
Section of The FAR Affected: 14 CFR 91.319(a)(1) & (2)
Description of Relief Sought/ Disposition: To permit PRA and its member flight instructors to conduct pilot and flight instructor training in an experimental gyroplane for compensation or hire. *GRANT, 4/15/99, Exemption No. 5209F*

[FR Doc. 99–9985 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195—Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held May 25–26, starting at 9:00 a.m. This new committee has been approved by the Program Management Committee to replace SC–169 and Working Group 3. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review Transition from SC–169; (3) Approval of Summary from the Last SC–169 Meeting; (4) Approve New Terms of Reference; (5) Report Final Disposition of Automet Minimum Operational Performance Standards; (6) Technical Discussions of FIS–B Minimum Aviation System Performance Standards (MASPS); (7) Review of FIS–B MASPS Issues and Action Items; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the Committee at any time.

Issues in Washington, DC, on April 14, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–9984 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5531]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1991 and 1993–1994 BMW 7 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1991 and 1993–1994 BMW 7 Series passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1991 and 1993–1994 BMW 7 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 21, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1990–1991 and 1993–1994 BMW 7 Series passenger cars are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1990–1991 and 1993–1994 BMW 7 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1991 and 1993–1994 BMW 7 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1991 and 1993–1994 BMW 7 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1991 and 1993–1994 BMW 7 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1990–1991 and 1993–1994 BMW 7 Series passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with U.S.-model components.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of a high-mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) replacement of the driver's seat belt latch and installation of a seat belt warning system; (b) replacement of the driver's side air bag and knee bolster on 1990–1993 models, and the driver's and passenger's side air bags and knee bolsters on 1994 models, with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with Type II seat belts in both front and rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the

fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 1990–1991 and 1993–1994 BMW 7 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR Part 541.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. NHTSA has previously decided that a number of individual models within the 1990–1991 and 1993–1994 BMW 7 Series are eligible for importation and has assigned separate eligibility numbers to each of these models. If the agency ultimately decides to grant this petition, these eligibility numbers will be replaced by a single eligibility number that applies to all 1990–1991 and 1993–1994 BMW 7 Series passenger cars.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 14, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9947 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5530]

Notice of Receipt of Petition for Decision That Nonconforming 1993–1997 Toyota Previa Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1997 Toyota Previa multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1997 Toyota Previa MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 21, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993–1997 Toyota Previa MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1993–1997 Toyota Previa MPVs that were manufactured for sale in the United States and certified by their manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993–1997 Toyota Previa MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1993–1997 Toyota Previa MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993–1997 Toyota Previa MPVs are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Locking*

Components, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.- model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/ reflector assemblies;

(c) installation of U.S.-model taillamp assemblies;

(d) installation of a center high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:*

(a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at all middle seat and rear seat outboard designated seating positions, and with a lap belt in the center designated seating position of the rear seat.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 14, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–9948 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics; Notice of Meeting

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Wednesday, April 28, 1999, 10:00 to 4:00 pm. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in conference room 8236–40 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include an introduction of new Advisory Council member, review of staffing, discussion of customer service outreach and marketing, upcoming data conferences, update on performance indicators project, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lillian Chapman, Council Liaison, on (202) 366–1270 prior to April 26. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Chapman.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Chapman (202) 366–1270 at least seven days prior to the meeting.

Issued in Washington, DC, on April 15, 1999.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 99–9986 Filed 4–20–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 21, 1999 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Voluntary Surveys to Enhance the Electronic Federal Tax Payment System.

Description: The Financial Management Service of the Department of the Treasury is undertaking voluntary surveys to improve the efficiency of tax payment collections and to help entities comply with electronic payment requirements.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 3,520.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting Burden: 880 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–9911 Filed 4–20–99; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a Public Briefing Concerning the Expansion of the International Trade Prototype

AGENCY: Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: This notice announces that Customs will hold a public briefing for interested parties concerning the expansion of the International Trade Prototype. The meeting will focus on providing details concerning the functionality of the next phase, soliciting participation, and allowing the public to provide comments. Seating is limited and will be extended to the first 100 callers.

DATES: The public briefing will take place on Thursday, April 29, 1999, beginning at 1:00 p.m. Requests to attend this briefing must be received by Pamela McGuyer at (202) 927–0279 on or before Monday, April 26, 1999.

ADDRESSES: The public briefing will take place in the Edward R. Murrow Conference Room located on the 13th Floor of the National Press Club located at 529 14th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For prototype or participation questions please contact Daniel Buchanan, of the U.S. Customs Service at (617) 565–6236, or Linda LeBaron Grasley, of the U.S. Customs Service at (716) 626–0400 x 204.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1998, Customs published a document in the **Federal Register** (63 FR 30288) announcing what is expected to be a series of prototypes collectively called the International Trade Prototype (ITP). This notice invited public comments concerning any aspect of the planned prototype, informed interested members of the public of the eligibility requirements for voluntary participation in the first phase of the first prototype called the International Trade Prototype 1 (ITP1) and outlined the development and evaluation methodology to be used in the test. It was announced that in order to participate in ITP1, the necessary information, as outlined in that notice, must be filed with Customs and approval granted.

Today's document announces that Customs will proceed to the next phase of the International Trade Prototype commencing in late June 1999 and will hold a public briefing for the purpose of providing details concerning the functionality of the next phase, soliciting participation, and allowing the public to provide comments.

For interested parties that are unable to attend the public briefing on April 29, 1999, a subsequent notice will be published in the **Federal Register** providing the details and requirements for participation in the next phase of the International Trade Prototype.

Dated: April 15, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–9945 Filed 4–20–99; 8:45 am]

BILLING CODE 4820–02–P

federal register

Wednesday
April 21, 1999

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 401 et al.

Commercial Space Transportation Licensing Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 411, 413, 415 and 417

[Docket No. 28851; Amdt. Nos. 401–01, 411–01, 413–01, 415–01 and 417–01]

RIN 2120–AF99

Commercial Space Transportation Licensing Regulations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The Associate Administrator for Commercial Space Transportation of the Federal Aviation Administration (FAA), Department of Transportation (DOT) is amending the FAA's commercial space transportation licensing regulations. The FAA amends its licensing regulations in order to clarify its license application process generally, and for launches from federal launch ranges, specifically. The regulations are intended to provide applicants and licensees greater specificity and clarity regarding the scope of a license, and to codify and amend licensing requirements and criteria.

EFFECTIVE DATE: June 21, 1999. An application pending at the time of the effective date must conform to any new requirements of this rulemaking as of the effective date. All license terms and conditions, and all safety requirements of this rulemaking also apply as of the effective date.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Licensing and Safety Division (AST–200), Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, DOT, Room 331, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8379; or Laura Montgomery, Office of the Chief Counsel (AGC–250), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3150.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule. Persons interested in being placed on a mailing list for future FAA notices of proposed rulemaking and final rules should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone 202–512–1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948). Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara/aces/aces140.html for access to recently published rulemaking documents.

In order to enhance communications regarding commercial space transportation with the public, the FAA developed an internet-based information system, which provides the public with electronic access to the FAA. The system provides on-line information to interested parties, and allows applicants, through a secure portion of the system, to check the status of applications and licenses. The system currently contains a limited amount of information, but includes schedules of upcoming commercial launches, the FAA's regulations, guidance documents, and research studies. The address is: http://ast.faa.gov/.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Introduction

By this rulemaking, the FAA clarifies license application procedures and requirements. The FAA's revisions to its regulations provide information regarding the scope of a launch license, the criteria for obtaining a license for expendable launch vehicles (ELVs) launching from federal launch ranges, and the underlying safety rationale for the FAA's launch licensing regime. These regulations also explain that the FAA will license the operation of a launch site or the launch of a launch vehicle from a site that is not operated by a federal launch range on a case by case basis.

History and Current Revisions

The Commercial Space Launch Act of 1984, as codified at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70121 (the Act), authorizes the Secretary of Transportation to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry as carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the Secretary to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States, 49 U.S.C. 70105, and to encourage, facilitate and promote commercial space launches by the private sector, 49 U.S.C. 70103.

The FAA carries out the Secretary's responsibilities for licensing and regulating launches and the operation of launch sites. Prior to November 15, 1995, the Secretary's responsibilities were implemented by the Office of Commercial Space Transportation (the Office), which was located within the Office of the Secretary in the Department of Transportation. Now, the Associate Administrator for Commercial Space Transportation is part of DOT's Federal Aviation Administration. When this administrative change was effected, the Secretary delegated the statutory authority over the regulation of commercial space transportation to the Administrator of the Federal Aviation Administration, and the Administrator redelegated this authority to the Associate Administrator.

On August 4, 1994, President Clinton announced a new National Space Transportation Policy reaffirming the government's commitment to the commercial space transportation industry and the critical role of the Department of Transportation in encouraging and facilitating private sector launch activities. In 1996, President Clinton signed a National Space Policy, which recognized the Department of Transportation as the lead federal agency for regulatory guidance regarding commercial space transportation activities. The FAA's

rules, by offering greater specificity and certainty regarding licensing requirements and the scope of a license, should assist the launch industry in its business and operational planning. This will facilitate the private sector's launch activities by increasing certainty and by easing its regulatory burden.

Background on the FAA's Commercial Launch Licensing History and Process

The FAA licenses commercial launches and the commercial operation of launch sites through 14 CFR Ch. III. In April 1988, when the then Office of Commercial Space Transportation first issued final regulations, no licensed launches had yet taken place. Accordingly, the Office established a flexible regime intended to be responsive to an emerging industry while at the same time ensuring public safety. The Office noted that it would ''continue to evaluate and, when necessary, reshape its program in response to growth, innovation and diversity in this critically important industry.'' Commercial Space Transportation Licensing Regulations, 53 FR 11004, 11006 (Apr. 4, 1988). Under the 1988 regulations the Office implemented a case-by-case approach for the evaluation of launch license applications. All commercial launches at the time took place from federal launch ranges.

In conjunction with information guidelines describing the Office's application process, the Office's regulations reflected the intent of Congress that the Office evaluate the policy aspects and safety of a proposed launch. The Office followed a case-by-case approach to performing these reviews, tailoring its information requests to the specifics of a given launch proposal.

Later, the Office took further steps designed to simplify the licensing process for launch operators with established safety records. For example, before issuing its final rules in 1988, the Office issued interim regulations, in which it had contemplated the possibility that ''one license could cover a specified series of launches where the same safety resources [would] support identical or similar missions.'' Commercial Space Transportation Licensing Regulations; Interim Final Rule and Request for Comments, 51 FR 6870, 6872 (Feb. 26, 1986). In 1991, the Office implemented this option by instituting a launch operator license for similar launches carried out by a single licensee. The launch operator license currently authorizes a licensee to conduct any number of launches within defined parameters over the course of a two year period. The FAA has continued to apply a case by case analysis to licenses authorizing a single launch or to licenses authorizing a set of specifically identified launches.

The FAA, in accordance with 49 U.S.C. 70112 and 14 CFR Ch. III, part 440, imposes financial responsibility requirements on a licensee, commensurate with the scope of its license, pursuant to which a licensee is required either to purchase insurance to protect launch participants in the event of claims by third parties and to protect against damage to government property, or to otherwise demonstrate financial responsibility. In the event that there were a launch accident and third party claims arising out of that launch exceeded the financial responsibility required by the FAA, the Act contains procedures through which the government of the United States may pay those excess claims up to a statutory ceiling. *See* 49 U.S.C. 70113. The possible payment of excess claims by the government for damages related to a particular launch is commonly referred to, albeit erroneously, as ''indemnification'' of the launch industry. The payment of excess claims constitutes, in fact, only a provisional agreement by the government of the United States subject to conditions, including Congressional appropriation of funds.

Growth and Current Status of Launch Industry

The number of commercial space launches has steadily grown over the years since the first licensed commercial launch in 1989. As of April 13, 1999, 110 licensed launches have taken place from five different federal launch ranges, and from two non-federal launch sites. Launch vehicles have included traditional orbital launch vehicles such as the Atlas, Titan and Delta, as well as suborbital vehicles such as the Starfire. New vehicles using traditional launch techniques include Lockheed Martin's Athena I and II, EER's Conestoga, Orbital Sciences Corporation's Taurus, and Boeing's Delta III. Unique vehicles such as the Pegasus are also included in this count. New launch vehicles are proposed every year. For example, the Pegasus air-launched rocket has been developed since the passage of the Act. On the horizon are sea-launched rockets, Lockheed Martin's Atlas III and Boeing's and Lockheed Martin's evolved expendable launch vehicles. A number of companies are proposing partially and fully reusable launch vehicles. Several companies are participating in partnership with the National Aeronautics and Space Administration (NASA) to develop X–33 and X–34 launch vehicles incorporating reusable and single-stage-to-orbit technology, which could result in vehicles for commercial use.

Currently, commercial launches take place from federal launch ranges operated by the Department of Defense and NASA. Launch operators bring launch vehicles to federal ranges such as Cape Canaveral Air Station, Vandenberg Air Force Base, White Sands Missile Range and Wallops Flight Facility for launch. A launch operator obtains a number of services from a federal range, including radar, tracking and telemetry, flight termination and other launch services. Pursuant to an agreement between a federal launch range and a launch operator, the federal range has final authority over decisions regarding whether to allow a launch to proceed. A federal range operates pursuant to its own internal rules and procedures, and the launch operator must comply with those rules and procedures in addition to the requirements of the FAA.

The U.S. commercial space transportation industry faces strong international competition. Ariane, Europe's launch vehicle, continues to be the market leader, with other competition coming from China, Russia, and Ukraine. The U.S. industry still obtains a significant percentage of launch contracts, and AST projects over seventy commercial orbital launches within the next three years.

Additionally, U.S. participation in international ventures is increasing. For example, International Launch Services (ILS), comprised of Lockheed Martin Corporation, Khrunichev Enterprise and NPO Energia, markets Russia's Proton rockets and the U.S. Atlas. Another international partnership, Sea Launch Limited Partnership (Sea Launch), involves Boeing Commercial Space Company, S.P. Korolev Rocket and Space Corporation Energia, KB Yuzhnoye and PO Yuzhnoye Mashinostroitelny Zavod, and Kvaerner Moss Technologies a.s., which are U.S., Russian, Ukrainian and Norwegian companies, respectively. Sea Launch has launched a commercial rocket from a modified oil rig located in the Pacific Ocean. Orbital Sciences Corporation has conducted a launch outside the United States and envisions more.

Current Revisions to Licensing Regulations

With six years of experience in regulating the commercial launch industry, the DOT Office of Commercial Space Transportation initiated a process for standardizing its licensing

regulations. Originally, when the Office first initiated its licensing program, the Office did not possess standardized rules or requirements. Accordingly, it evaluated each license application individually to ensure that a proposed launch would not jeopardize public health and safety, the safety of property, U.S. national security or foreign policy interests or international obligations of the United States. Over the course of time, and with the input of licensees and federal launch ranges, the FAA has evolved a standardized approach to licensing launches from federal launch ranges. Accordingly, the FAA now implements that approach through revisions to its regulations.

On October 13, 1994, in anticipation of issuing a notice of proposed rulemaking, the Office of Commercial Space Transportation, DOT, announced that it was holding a public meeting to obtain industry's views to assist the Office in developing an NPRM that would address specific requirements for launch and launch site operator licenses. Notice of Public Meeting, 59 FR 52020 (1994). The Office stated that it would streamline its launch licensing process by standardizing requirements and by codifying certain information requirements in its regulations. *Id*. The Office also advised the public that it would promulgate rules concerning licensing the operation of a launch site. *Id*. The FAA proposes to implement rules of general applicability for operation of a launch site through an additional notice of proposed rulemaking in order to foster certainty for this new industry as well. *Id*. The public meeting took place on October 27, and 28, 1994, and was attended by representatives of the commercial launch industry, payload companies, prospective commercial launch site operators, interested government agencies, both state and federal, and the public.

On March 19, 1997, the FAA released a notice of proposed rulemaking proposing to amend its licensing requirements. Commercial Space Transportation Licensing Regulations, Notice of Proposed Rulemaking (NPRM), 62 FR 13216 (Mar. 19, 1997). In the NPRM, the FAA proposed to narrow its definition of launch from ''gate to gate,'' which resulted in the licensing of the launch related activities of a launch operator at a federal launch range prior to the arrival of the launch vehicle, to ''vehicle at the gate,'' which encompasses only the launch operator's activities once its vehicle arrives. The NPRM proposed a launch license application process developed through its case by case license history, including the implementation of certain safety proposals recommended by the National Transportation Safety Board. The FAA also proposed to streamline and reorganize a variety of other licensing provisions. The comment period closed May 19, 1997. At the request of several launch operators, the FAA reopened the comment period until August 4, 1997. The FAA received comments from a number of interested parties, including launch operators, a payload provider, a launch site operator and prospective reusable launch vehicle operators.

The Environmental Protection Agency commented on the FAA's environmental procedures. The launch operators who filed comments included Boeing Commercial Space Company, Lockheed Martin Corporation, McDonnell Douglas Aerospace, and Orbital Sciences Corporation. Reusable launch vehicle operators' views were represented by Kistler Aerospace Corporation, Rotary Rocket Company, and Space Access. Hughes Electronics, Spaceport Florida Authority, and the National Transportation Safety Board also filed comments. The comments focused on several major issues, with the proposed definition of launch eliciting the most attention. Foreign ownership of a license applicant also proved a topic of concern, as did issues surrounding the FAA's proposed risk threshold and various safety requirements. In light of the great variety of topics encompassed by this rulemaking, rather than devoting a single section to all of the comments, the FAA addresses the comments by subject matter throughout the preamble and section by section analysis in the relevant context.

On October 28, 1998, the Commercial Space Act of 1998 was signed into law. Among other things, it revised the definition of launch to include activities ''involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States.'' P.L. 105–303 (1998), 49 U.S.C. 70102(3). The change affects this rulemaking's definition of launch by both confirming the more narrow application proposed in the NPRM and expanding the scope of launch to encompass launch vehicle preparatory activities occurring at any launch site in the United States, even when those activities take place at a launch site from which flight of the launch vehicle does not take place.

Launch License

The amendments to the FAA's launch licensing regulations address the definition of ''launch,'' licensing requirements, including payload determinations and policy reviews, and information required from an applicant proposing to launch a vehicle employing established technology and procedures from a federal launch range. The FAA here changes its interpretation of the definition of ''launch'' and thus changes the scope of a launch license. Additionally, in contrast to what was originally proposed in the NPRM, which was to define with particularity the beginning of launch for purposes of those taking place from a federal launch range, the FAA will apply its proposed definition of launch to a launch taking place at any launch site located in the United States, whether that launch site is a federal launch range or not. Through this rulemaking the FAA is formalizing its practice of issuing two different types of launch licenses, a launch operator license pursuant to which a licensee may conduct any launches that fall within the broad parameters described in its license, and a launch-specific license, which allows a licensee to conduct only those launches enumerated in the license.

Scope of Launch License and Definition of ''Launch''

The Act requires a launch operator to obtain a license for the launch of a launch vehicle. Accordingly, the definition of ''launch'' controls the scope of a launch license. Greater certainty regarding this definition will allow a licensee to plan better regarding a number of issues. Because the FAA's financial responsibility requirements and eligibility for payment by the United States of excess claims for liability for damages to third parties are coextensive with a licensed launch, knowledge of the scope of a launch license allows a licensee to manage its risks appropriately and to make its own provisions for financial responsibility or insurance coverage in addition to that required under the statute. Through this rulemaking, the FAA defines launch to begin with the arrival of a launch vehicle at a federal launch range or other U.S. launch site.[1] Launch ends, for purposes of ground operations, when the launch vehicle leaves the ground, and, for purposes of flight, after the licensee's last exercise of control over the vehicle. The NPRM had proposed to include within the new definition ''[t]he term launch includes the flight of a launch vehicle, and those hazardous pre-flight activities that are closely

[1] As discussed in greater detail in response to comments, the FAA does not define launch to commence with the arrival of a payload at a launch site.

proximate in time to flight and are unique to space flight.'' That sentence is now omitted as superfluous in light of the application of the launch license period to all U.S. launch sites, regardless of whether the launch site is located on a federal launch range or not. The concepts guided the creation of the definition for this rulemaking, and will still guide the FAA in defining the beginning of launch outside the United States.

In its NPRM, the FAA considered three options to defining launch and the scope of a launch license and, by necessary implication, possible ''indemnification'' for government property and third party damages arising out of a launch. The FAA noted that its approach of licensing the activities of a launch operator within the gates of a federal launch range, commonly referred to as ''gate to gate,'' had been criticized as too broad. The criticism came from Congress through non-binding report language; however, because Congress would ultimately prove the source of funding for any possible ''indemnification,'' the FAA was concerned that ''gate to gate'' might eventually mislead industry into inappropriately relying on the government for money that was not available. Congress might deny funding on the grounds that pre-flight preparation did not constitute part of launch under 49 U.S.C. Subtitle IX, ch. 701.[2] Accordingly, the FAA considered two approaches to narrowing its definition of launch. It considered, but rejected, defining launch as commencing with ignition. Instead, it proposed to define launch as commencing with the arrival of a launch vehicle at a federal launch range from which flight would occur. The FAA also proposed in its NPRM to clarify when launch ended. With flight, launch ends when the last action over which a licensee has direct control is performed. As proposed in the NPRM, ground operations would no longer be deemed part of launch when an expendable launch vehicle left the ground. With the changes to the definition brought about by the Commercial Space Act of 1998, the FAA revises the definition to include activities involved in the preparation of a launch vehicle for launch, when those activities take place at a launch site in the United States. The FAA now adopts those changes.

In reaching its final decision regarding its interpretation of launch, the FAA considered a number of factors. The statutory definition provided the first line of inquiry. The FAA also took into account the commenters' desire for a consistent and broad interpretation. Ease of administration played a role as well. In the end, the change in the level of risk proved determinative as to where in the course of preparation for flight the FAA would deem launch to commence.

The FAA received comments on its proposed revisions. Boeing Commercial Space Company (Boeing) voiced its concern with the FAA's proposed definition of launch, opposing the inclusion of ground operations out of concern for the precedent such a definition might establish for launches conducted by Sea Launch, which proposes to launch from the ocean, and in which Boeing participates as a partner. Boeing believes that although some hazardous activities are part of launch preparation, these activities do not ''in themselves constitute uniquely hazardous events which should be covered in the scope of a launch license. Such activities should [be] and are regulated by existing hazardous material and operations regulations that are applicable to industry at large.'' *Boeing* at 1. According to Boeing, the purpose of the Act was to define the scope of launch ''so as to cover those operations which directly placed the general public at risk.'' *Boeing* at 1. Where more innovative launch technologies are employed, such as that contemplated by Sea Launch, Boeing expects that launch will be defined consistently with this purpose.

Hughes Electronics (Hughes) requested that the FAA clarify whether a launch vehicle's payload is part of launch site activities in order for Hughes to determine when the possible indemnification provisions of the Act apply. Hughes proposed that indemnification provisions of the FAA's rules be clarified to apply to a payload and its components, or that a payload be included within the definition of launch vehicle. Hughes asked, in essence, that the FAA define launch, for purposes of including payload activities, to commence with the arrival of a payload at the launch site. Launch would end, under Hughes' proposal, either after a defined period of time or after such time as a launch vehicle could cause a payload accident, whichever came later. Hughes did not elaborate on the implementation of its proposals.

Kistler Aerospace Corporation (Kistler), concerned that the proposed regulations governing expendable launch vehicles (ELVs) might serve as a model for rules governing reusable launch vehicles (RLVs), argued against including ground operations within a launch license. Kistler recommended, instead, that, for a liquid-fueled vehicle, launch be defined to commence with the fueling of a vehicle. In support of this position Kistler first noted that defining launch as commencing with the arrival of a launch vehicle at a federal launch range, may not or should not apply to the launch of an RLV, pointing out that although an ''RLV may ''arrive'' at the launch range initially, it thereafter returns directly and repeatedly to the launch range. Clearly, however, the RLV is not constantly in a ''launch'' state.'' *Kistler* at 7. Kistler also argued against the FAA position that pre-flight activities constitute uniquely hazardous activities. ''Many of these activities are entirely routine industrial activity and pose no unique hazards.'' *Kistler* at 7. Kistler maintained that subjecting all these activities to FAA review and prohibiting them without the issuance of a license would constitute an unnecessary and costly regulatory burden. Moreover, if the FAA were to require a license for ground activities, Kistler and its customers would have to sign cross-waivers with its contractor and subcontractors, its customers and the contractors and subcontractors of its customers. This, Kistler maintained, ''would distort the normal commercial allocation of risk and legal remedies for fault and, consequently, would increase insurance costs to the licensee.'' *Kistler* at 7–8.

Kistler recommended, for a liquid fueled vehicle, that launch commence with fueling. This is because fueling is closely proximate in time to flight and may be directly attributable to space flight, unlike other activities, which Kistler characterized as routine industrial activities not directly attributable to space flight. *Kistler* at 8. Kistler did not describe the other ''routine industrial'' activities. Nor did it describe its basis for distinguishing between routine industrial activities and those that are directly attributable to space flight. Nonetheless, its point of view is interesting, indicating as it does, that there is an insurance market for ground operations, and one apparently affordable to a start up company such as Kistler.

Kistler also advised that it believes that an RLV launch ends with the landing of the RLV, and would include any ''proximate consequences'' of the landing. *Kistler* at 9. Kistler was silent with respect to what it considers a proximate consequence. Kistler would not include post-launch ground activities within the definition of launch.

[2] Although originally prompted to revisit the scope of launch out of concern for the availability of funding, the FAA's revision derives from its interpretation of the Act as a whole.

Lockheed Martin also filed comments, which included correspondence from Marsh & McLellan, an aviation underwriter. Lockheed Martin stated that it ''views with serious reservations the Office's proposed definition of ''launch'' that would narrow the scope of a license issued by the Office and effectively standardize the treatment of all launch systems from federal ranges, without regard for the[ir] unique attributes * * *.'' *Lockheed Martin* at 1. Lockheed Martin supported the FAA's proposal to dispense with gate to gate as a means of defining launch, agreeing that it resulted in illogical exclusions. *Lockheed Martin* at 3. It maintained, however, that ''vehicle at the gate'' achieves the same illogical exclusions of hazardous activities depending on whether they take place before or after a vehicle's major components arrive at a federal launch range. *Lockheed Martin* at 3. Lockheed Martin also believes that the FAA's concerns regarding congressional report language were groundless. *Lockheed Martin* at 3–4.

Lockheed Martin proposed that the FAA adopt an activity test to determine what may be included within the scope of a launch license. *Lockheed Martin* at 6. The FAA should ''address hazardous risks associated with a particular launch campaign,'' presumably on a case-by-case basis for each license it issues. *Lockheed Martin* at 6. Lockheed Martin believed it would be instructive for the FAA, in considering hazardous risks, to consider the Public Law 85–804 [3] indemnification that the Department of Defense contractually offers its contractors. *Lockheed Martin* at 5. It noted that DoD contracts for Atlas, Titan and Delta launch services provide government indemnification for ''unusually hazardous risks,'' which include, in part, the burning, explosion or detonation of propellants, liquid fueled rocket engines or solid fueled rocket motors, or launch vehicles or their components during testing, transporting, launch preparation or launch. *Lockheed Martin* at 5. ''Unusually hazardous risks'' also include, according to Lockheed Martin's list, the toxic or other unusually hazardous properties of propellants or inert gases, their constituent ingredients, or their degradation products and the flight or surface impact of launch vehicles or components or fragments thereof. *Lockheed Martin* at 5.

[3] P.L. 85–804, 50 U.S.C.A. §§ 1431–1435 (1991 and West Supp. 1997), is effective only during a national emergency. 50 U.S.C. § 1435. It does not define launch.

The former McDonnell Douglas Aerospace filed draft comments with a request for an extension of time. In its draft comments, McDonnell Douglas asked that the FAA continue to employ gate to gate as the scope of a launch license, with certain modifications. Specifically, McDonnell Douglas sought to extend license coverage off of a federal launch range, for activity that ''is consistent with standard commercial space industry practice.'' McDonnell Douglas does not elaborate on what it envisions as consistent with standard commercial space industry practice. The main thrust of its argument appears to be that it favors centralizing questions of liability and insurance within the FAA and removing them as subjects of Air Force launch support agreements.

Orbital Sciences Corporation (Orbital) opposed that portion of the proposed definition of launch that confined a licensed launch to the launch site from which flight would occur. According to Orbital, the FAA's proposed approach was illogical because it meant that identical activities might in some instances be licensed and in others not. Also, the proposed approach would discriminate against modern launch vehicle technologies, so that they would be ''penalized by the denial of license coverage.'' *Orbital* at 2. Orbital, relying on 1997 report language, also argued that the House Science Committee opposed the FAA's narrowing of the definition of launch. See Civilian Space Authorization Act, Fiscal Years 1998 and 1999, H.R. 1275, H. Rep. 65, 51, 105th Cong., 1st Sess. (Apr. 21, 1997).

Orbital proposed that the FAA adopt an activity test to determine what activities might be included in the definition of launch. It recommended that the FAA ''identify pre-launch activities generally common to launch systems and cover them for all launch systems if they are sufficiently hazardous and integral to a licensed launch, regardless of where or when they occur.'' *Orbital* at 4. Orbital provides a list of those of its pre-flight activities it considers hazardous. *Orbital*, Attachment 2.

Space Access, which intends to operate a reusable launch vehicle, also filed comments. Space Access' comments focused on the impact on future developments, such as reusable launch vehicles, of the FAA's proposed definition of launch. Space Access opposed defining launch to encompass a vehicle's entire time at a launch site, and believes that there is no way to consistently and fairly apply the FAA's proposed definition of launch. Space Access noted that the FAA ''does not regulate the development, testing, or transportation of solid rocket boosters at a manufacturer's facility, even though this [is a] significant hazardous activity, so it should not license nor should the government offer to indemnify that activity just because it occurs on a Federal Launch Range.'' *Space Access* at 6. Furthermore, defining a vehicle's ''major components'' may ultimately prove a burdensome task for the FAA. *Space Access* at 4. Space Access also questioned the FAA's legal authority for its proposed definition, and does not believe that the Act supports the ''gate to gate'' approach. In support of this, Space Access pointed out that under the Act, as the NPRM also notes, launch does not start with launch services.

After reviewing a number of conceptual approaches, Space Access recommended that the FAA define launch to begin with ''an intentional self propelled change in the state of equilibrium of the launch vehicle and any payload toward Earth orbit or outer space [that] continues until the launch vehicle and payload achieve[] a new state of equilibrium or exit[]the Earth's dominant gravitational influence.'' *Space Access* at 5. By this, Space Access intended ''vertical or horizontal takeoff.'' *Id.* For the end of launch, this would mean that once a vehicle completes its propellant expulsion and no other changes in equilibrium are planned, the launch process is over. *Space Access* at 5. A change in equilibrium to reach other places in earth orbit or outer space would not be part of launch.

The Spaceport Florida Authority (SFA) supported the proposed definition of launch as including those hazardous pre-flight activities that are closely proximate in time to flight and are unique to space flight. *SFA* at 1. SFA also supported the FAA's proposal to define the beginning of launch as commencing with the arrival of a vehicle's major components at a federal range. SFA opposed limiting the scope of a licensed launch to those activities that occur at the federal launch range from which flight would occur because this approach would result in some of the current pre-flight activity of at least two launch companies not being licensed. *SFA* at 2. SFA accordingly viewed this approach as discriminatory. SFA also maintained that the proposal was contrary to the statute, which requires consistency with public health and safety. SFA pointed out that in some situations the FAA would review certain pre-flight activities and in others it would not, thus resulting in no FAA safety oversight and no possibility of indemnification by the federal government. *SFA* at 2. On a separate

note, SFA stated its support for excluding the storage of solid rocket motors from the definition of ''launch.'' *SFA* at 3. SFA notes that such storage is not extremely hazardous and that commercial insurance for storage is available at a reasonable premium.

The FAA considered three possible options in defining ''launch'' for purposes of developing proposed regulations. The FAA considered codifying its ''gate to gate'' definition but was concerned that ''gate to gate'' created a false impression that indemnification would be available for all commercial activities taking place within the confines of a federal range. The FAA also weighed the most narrow approach, which would employ the ordinary definition of ''launch'' as only those flight activities beginning at ''T minus zero (T–0),'' or intentional first stage ignition; but the FAA initially determined in its NPRM that this approach failed to provide regulatory oversight of certain hazardous activities and that concerns regarding international competition weighed against this formulation. In light of the 1998 change to the Act, the FAA must reject this narrow definition as inconsistent with the new law. A less expansive approach than ''gate to gate,'' one within the scope of the FAA's mandate, will include within a launch license those activities that are part of a launch as contemplated by the new directive to license activities involved in the preparation of a launch vehicle for launch, when those activities take place at a launch site in the United States. This satisfies the requirements of the statutory change and the wishes of commenters such as Orbital and the Spaceport Florida Authority. Under the approach the FAA now adopts, because of the 1998 changes and because risks change shortly after the launch vehicle or its components enter the gate of a launch site, launch begins, for purposes of licensing, upon the arrival of that vehicle to be prepared for flight at a U.S. launch site.

Vehicle at the Gate

By this rulemaking, the FAA will license as launch those preparatory activities that may be considered part of a launch. As noted in the NPRM, the FAA's licensing authority derives from the Act, which states that a license is required ''to launch a launch vehicle.'' 49 U.S.C. § 70104(a). The word ''launch'' is commonly understood to mean ignition, lift-off and flight of a launch vehicle, as well as, perhaps only in popular parlance, certain immediately preliminary activities such as countdown and other final steps necessary to effectuate flight. The Act defines ''launch'' to mean ''to place or try to place a launch vehicle or reentry vehicle[4] and any payload from Earth-(A) in a suborbital trajectory; (B) in Earth orbit in outer space; or (C) otherwise in outer space, including activities involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States.'' 49 U.S.C. § 70102(3).

The recently enacted change to the definition of launch in the Act establishes which pre-flight activities are part of a launch. There are certain pre-flight activities so integral to the launch of a launch vehicle that they should be considered part of the launch itself even though they do not constitute flight. Additionally, there are hazards associated with pre-flight activity that are proximate in time to flight and unique to space flight. Because the changes to the Act dictate that launch include preparation of a launch vehicle and payload for flight, the FAA defines the commencement of launch as the moment at which hazardous activities related to the assembly and ultimate flight of the launch vehicle begin, which, for purposes of consistency and clarity, the FAA deems to be when the major components of a licensee's launch vehicle enter, for purposes of preparing for flight, the gate of a U.S. launch site, whether situated on a federal launch range or not, and regardless of whether flight occurs from there or not.

In its NPRM, the FAA determined that defining ''launch'' as the arrival of the launch vehicle at the gate of a launch site accorded with the proposals of a number of earlier commenters, who suggested that the FAA define ''launch'' to begin when hazardous activities start. The FAA is charged by statute with protecting the public, and a definition that recognizes hazards will address concerns regarding public health and safety. Only if an activity is so hazardous as to pose a threat to third parties should regulatory oversight by the FAA be exercised, and ''indemnification'' to recompense third parties be available. Because shortly after vehicle components arrive, hazardous activities related to the assembly and ultimate flight of the launch vehicle begin, the arrival of the vehicle or its parts is a logical point at which the FAA should ensure that a launch operator is exercising safe practices and is financially responsible for any damage it may cause. These hazardous activities include, but are not limited to, fuel tank wet testing, ordnance installation, spin balancing and the stacking of motors. They are hazardous because they expose third parties and government property to risk of damage or loss. The FAA believes that this test is well within the new licensing authority conferred by the Congress' 1998 revision to the Act. Also it both broadly incorporates the activity test advocated by commenters such as Lockheed Martin and Orbital and accommodates the FAA's need for simplicity in administration. A launch license will encompass hazardous activities without requiring numerous decisions regarding individual hazardous activities on a piecemeal basis.

Moreover, with the expansion of the definition as originally proposed to encompass the ground operations of a launch operator at a commercial launch site not situated on a federal launch range, the advisability of this approach is further evident. The FAA believes that a launch operator contracting with a licensed launch site operator should be the licensee responsible for activities in preparation for flight. To the extent that the government may hope to achieve seamless safety and financial responsibility coverage, the FAA would rather look to a launch operator, who has control and authority over its employees, contractor and subcontractors, including any launch site operator providing services as well as a location from which to launch, for regulatory responsibility. Otherwise, the FAA might have to attempt to apportion responsibility for ground operations between a launch operator and a launch site operator and develop additional criteria for doing so. In this regard, commenters such as Kistler and Space Access should note that were a launch license for ground operations not required a license to operate a launch site might be.

For purposes of ascertaining the start of launch, and particularly with the 1998 addition to the definition of launch, the FAA reviewed the hazardous activities associated with the launch of a launch vehicle to determine when those hazardous activities started. The FAA's experience shows that commercial launch vehicles share a number of hazardous procedures, and that most of those procedures take place once the vehicle is at a launch site in order to minimize hazardous transport and exposure time. The DOT Office of Commercial Space Transportation prepared a study in 1994, available in draft, titled ''Prelaunch Hazardous

[4] The Commercial Space Act of 1998 also amends the definition of launch to add ''reentry vehicle and any payload from Earth—.'' Because reentry will be the subject of a separate rulemaking it will not be addressed here.

Operations for the Delta, Atlas, Titan at Cape Canaveral Air Station, Pegasus at Vandenberg Air Force Base, Conestoga at Wallops Flight Facility and Black Brant at White Sands Missile Range.'' The study analyzed similarities in the risk profiles for pre-flight processing of these vehicles, and compared the pre-flight processing timelines for the various vehicles. The results complement information available in a DOT ''Hazard Analysis of Commercial Space Transportation,'' May 1988. The amount of damage that a vehicle may cause varies from vehicle to vehicle, depending upon such factors as the mass of the vehicle, the number of stages, the presence and number of solid rocket motors, and the type and quantity of propellants. The launch vehicles studied and their pre-flight processing procedures are similar in that each has a similar hazardous potential.

The study showed that even though pre-flight processing procedures and the sequence of those procedures may vary among vehicles, the vehicles studied share such pre-flight processing procedures as solid rocket motor handling and processing, flight termination system or separation ordnance installation and checkout, and fueling. These activities occur at different times for different vehicles. The likelihood of a mishap [5] resulting from these procedures is similar for each vehicle. These procedures constitute hazardous operations that have an identifiable or otherwise quantifiable probability of occurrence (P_o) of a mishap. The probabilities that these operations will result in a mishap are approximately $P_o=10^{-4}$ to 10^{-5} for solid rocket motor handling and processing; $P_o=10^{-5}$ for flight termination system or separation ordnance installation and checkout, and $P_o=10^{-3}$ to 10^{-6} for fueling. ''Eastern Launch Site Safety Programs,'' Louis J. Ullian, Commercial Space Risk and Insurance Symposium, Cocoa Beach, Florida (Oct. 26, 1988). These probabilities are relied upon by launch companies, federal agencies and federal launch ranges for their analyses of hazardous operation risks, and reflect the rigorous safety standards, analysis and review process required at federal launch ranges for hazardous ground operations.

The FAA considers these operations hazardous because their processes may lead to identifiable mishaps and dangerous consequences.[6] Solid rocket motor handling and processing may result in ignition of the propellant, either explosively or otherwise. This may be caused by the unconstrained burning or explosion of a major portion of the propellant if circumstances prevented proper venting of the propellant. Casualties and property damage may result if an installed igniter initiates and causes an engine or solid rocket motor to become fully propulsive, as during flight. Casualties or damage may result from fire, explosion or toxic fumes that may be a by-product of combustion. These events may result in direct damage or casualties as the consequence of blast and debris effects. These events may also lead to secondary effects such as fires, explosions or unintended motor stage flight that may be caused by the direct blast and debris effects.

Flight termination system or separation ordnance installation and checkout may result in lethal or damaging releases of energy. The inadvertent ignition of installed or uninstalled ordnance, including that of the flight termination system and explosive bolts installed on various separation systems could result in explosion and debris. Fueling may result in a range of consequences, including fires, either pool fires or fireballs, or the release of vapor clouds, which may be toxic or which may ignite. These events may occur because of leakage during fueling or spills during an accident. If such a mishap involves toxic propellants, toxic components of the fuels may be released into the atmosphere or spilled on the ground. If a vehicle releases its hazardous materials into the atmosphere, it could expose people at a launch site or in the public at large to those hazards.

As a general rule, hazardous operations begin as soon as, or shortly after, a launch vehicle's major systems arrive at a launch site. The FAA relies on the new 1998 definition to employ a geographic element in defining launch by using entry of a launch vehicle onto a launch site in the United States as part of its definition of ''launch.'' This ensures consistency and clarity of interpretation. Consistency is guaranteed by the fact that regardless of vehicle type, each vehicle will receive the same regulatory coverage within the United States. Although some commenters maintain that launch begins at different points for different vehicles, because the FAA wishes to treat launch operators in an equivalent fashion, the FAA will not define ''launch'' on the basis of the launch vehicle. Moreover, reliance on a geographic element provides clarity of interpretation even for a launch operator of a new vehicle using different technology. An applicant seeking a license for a new vehicle will know to plan for license coverage at the time its vehicle enters a U.S. launch site.

Some commenters dispute this conclusion, arguing that defining a launch to commence with a vehicle's arrival results in different licensing treatment of different activities. The FAA recognizes this dilemma. It believes, however, that a single test such as a vehicle's arrival will avoid an administrative burden on both the FAA and its licensees. Rather than creating an activity test, as recommended by some, which would result in a series of tests, the FAA will face only questions attendant to a single activity. Many of the questions that will plague determining when a vehicle arrives at a federal launch range'' launch vehicles show up in parts, a lot of them'would also bedevil any particular hazardous activity related to the preparation of any particular vehicle for flight. Additionally, the FAA considers it outside of its statutory mandate to license pre-flight activities located outside of a launch site in light of the new definition of launch. That definition limits launch to activities taking place at a U.S. launch site. In any event, that commercial operations exist outside of federal launch ranges to manufacture and process vehicle components and payloads indicates to the FAA that the hazards are not so extreme as to stifle the development of facilities and services off of a federal launch range. Additionally, as some of the comments indicate, insurance does appear to be available.

Another aspect of the FAA's definition attempts to capture those activities that constitute preparation for flight. For example, fueling for liquid-fueled vehicles usually takes place not long before flight to minimize the risks attendant to the exposure to a fueled vehicle, and the FAA would consider that activity to be a component of launch under the Act. On the other hand, the FAA does not intend a launch license to encompass components stored at a launch site for a considerable

[5] The term ''mishap'' means a launch accident, a launch incident, failure to complete a launch as planned, or an unplanned event or series of events resulting in a fatality or serious injury (as defined in 49 CFR § 830.2) or resulting in greater than $25,000.00 worth of damage to a payload, a launch vehicle, a launch support facility or government property located on the launch site.

[6] These findings are based on the DOT Office of Commercial Space Transportation's 1994 review of launch vehicle manufacturers' data, FAA commercial launch baseline assessments, past FAA maximum probable loss determination analyses and Ullian's 1988 presentation at the Commercial Space Risk and Insurance Symposium.

period of time prior to flight. The FAA is aware that the definition of launch may be construed to encompass motor storage as well. However, if motors arrive at a launch site for purposes of storage rather than as part of a launch campaign in preparation for flight, the FAA does not consider that storage part of a launch. SFA's comments support this interpretation.

Orbital questioned one element of the FAA's proposed definition. Orbital disputed that part of the FAA's definition that included within the definition of launch only those activities that take place at the launch site from which flight will occur. Orbital's concern is addressed in the 1998 amendment to the definition of launch. The statutory revision expands launch to include preparatory activities that ''take place at a launch site in the United States.'' 49 U.S.C. 70102(3) (emphasis added). This provision includes preparatory activities at any U.S. launch site. The FAA notes that the revision excludes preparatory activities outside of a U.S. launch site.

Hughes asked for clarification regarding the commencement of launch with respect to payloads. Hughes suggested that launch be defined to commence with the arrival of a payload. Under current conditions, a payload tends to arrive after a launch vehicle, and its integration to a launch vehicle has been included within the definition of launch. The FAA does not consider payload processing absent launch vehicle integration to constitute part of launch or part of a licensee's licensed activities. Although the 1998 amendment appears to provide that preparation of a payload for launch at a U.S. launch site is part of launch, the revision does not require the definition of launch to encompass payload processing at a launch site until the payload is being integrated with a launch vehicle. The revision itself provides for activities involved in the preparation of a launch vehicle or payload for flight to ensure that launch may begin with a launch vehicle's arrival alone at a launch site, regardless of the presence of a payload. Read in the context of existing statutory provisions and requirements, the revised definition does not encompass payload activities that are not otherwise associated with a launch vehicle. The original and still unchanged definition of launch means, in relevant part, the launch of a launch vehicle and any payload. 49 U.S.C. 70102(3). Section 70104 further confirms the inadvisability of commencing launch with the arrival of a payload. Section 70104 requires a license for the launch of a launch vehicle, not for the launch of a payload or for the launch of a launch vehicle and a payload. Moreover, were launch to begin with the arrival of a payload it would constitute unlicensed launch, and a payload operator is not required to obtain a launch license in any event. Additionally, the launch operator, who is the licensee, is not necessarily participating in the payload processing until integration of the payload with the vehicle. For all these reasons, the FAA will not change its definition.

''T Minus Zero (T–0)'' or Intentional First Stage Ignition

The FAA also considered defining ''launch'' as the word is ordinarily understood. This would have limited the scope of a launch license to activities commencing at intentional first stage ignition. Were a launch license to cover only those activities, the launch industry would no longer have been eligible for so-called indemnification for damages arising out of any preparatory activities. The regulatory burden, however, would be correspondingly less. Such a licensee would not, for instance, be required to obtain a license as early in the process as it must for gate to gate, nor would it be required to provide the FAA as much information. Likewise, this approach would have resulted in similar treatment of licensees regardless of the type of vehicle employed or the timing or location of hazardous activities. The FAA carefully weighed this approach, especially in light of those comments advocating a more narrow definition of launch. With the changes brought about by the 1998 revision to the Act, which expands the scope of launch, defining launch as commencing with intentional first stage ignition is no longer an option.

''Gate to Gate''

The FAA's practice of licensing ground operations associated with the conduct of a launch, commonly referred to as ''gate to gate,'' was to license all commercial, launch related activities by a launch operator operating within the gates of a federal range. Through this rulemaking the FAA abandons this approach. Under this view, a launch operator's operations were licensed, even if ignition and flight were not imminent and even if the launch vehicle itself was not present at the range. The 1998 amendment to the definition of launch confirms the FAA's intent to abandon this approach. A launch vehicle must be present for preparatory activities to constitute part of launch.

The ''gate to gate'' approach constituted an attempt to treat different launch vehicles similarly. Whether a launch vehicle undergoes hazardous integration significantly in advance of flight, as the Delta and Pegasus do, or closer in time as an Atlas does, a license covered the same pre-launch activities: all launch related activities performed by a launch operator within the gates of a federal range. Additionally, ''gate to gate'' licensing ensured that the FAA required launch operators to demonstrate financial responsibility through the purchase of insurance coverage or other appropriate measures for possible damage arising out of commercial activities to government property. ''Gate to gate'' licensing received support because of the belief that a launch operator would be indemnified for damage to third parties caused by pre-flight and post-flight ground operations.

The FAA does not define ''launch'' to encompass all pre-flight activities by a launch operator at a launch site because not all activities are part of the launch of a launch vehicle. A launch operator may be present on the range, and engaged in preparatory activities, but not be working on a launch vehicle or its component parts in preparation for flight. A licensed launch operator may be present at a federal range between launches. The FAA is aware of launch operators who perform construction activities within the gates of a federal range months or years prior to any anticipated flight of a launch vehicle. At that point, the launch operator may or may not be engaged in the type of hazardous activities warranting FAA oversight or indemnification because construction activity, however hazardous, is not part of the process of preparing the vehicle itself for flight.

In support of ''gate to gate'' licensing it has been suggested that pre-launch licensing authority arises out of the Act's directive to license ''operation of a launch site.'' *See* 49 U.S.C. 70104(a). In the case of a launch taking place from a federal launch range, the launch operator is not, in fact, operating a launch site. The site is operated by the federal range. Moreover, it is the FAA's opinion that a person requires a license to operate a launch site only if offering the site to customers for their launch. Otherwise, activities related to preparation for flight are part of a launch license rather than a license to operate a launch site.

As noted in the NPRM, ''gate to gate'' evolved out of an industry desire for broad license coverage, and this approach was the FAA's official position with respect to the scope of its licenses. Other government sectors, including NASA, have criticized this

approach as overly broad. Civilian Space Authorization Act, Fiscal Years 1998 and 1999, H. Rep. 65, 51 105th Cong., 1st Sess. (Apr. 21, 1997). In 1995, House Science Committee Report No. 104–233, accompanying H.R. 2043, the NASA Authorization Act for Fiscal Year 1996, noted that members of Congress view with concern this approach to covering all licensee activities within the gates of a federal range, and considered it too broad.[7] Although recognizing that the report language does not carry the force and effect of law, the FAA is concerned that launch operators might be pursuing their pre-launch activities in reliance on an indemnification that must be enacted by Congress and that may or may not be available from Congress. This prompted the FAA in its NPRM to revisit the issue of the scope of a license and, thus, necessarily, of the definition of ''launch.''

Lockheed Martin questioned the FAA's concern over the possibility that Congress would refuse to vote for indemnification for all of a launch operator's activities at a federal launch range. As stated in the NPRM, while the FAA recognizes that the report language of concern does not have the effect of law, *see, e.g., Public Employees Retirement Systems of Ohio* v. *Betts,* 492 U.S. 158, 168, 109 S. Ct. 2854, 2862 (1989), it nonetheless remains a fact that Congress does play a role in deciding whether to provide ''coverage'' for damages in excess of the FAA's financial responsibility requirements. In *Betts,* the Court noted that it ''has observed on more than one occasion that the interpretation given by one Congress (or a committee or Member thereof) to an earlier statute is of little assistance in discerning the meaning of that statute.'' *Id.* However, in this funding context, the FAA does not believe that it behooves either the FAA or licensed launch operators to ignore these warnings. That is the source of the FAA's concern. Additionally, the fact that 1997 also produced report language recommending a more narrow definition indicates to the FAA, as it should to industry, that the better course is to rely on a definition grounded in the Act rather than on fluctuating Congressional report language.

End of Launch

The FAA notes that the end of launch may be expressed both in terms of flight activity and ground operations. For purposes of flight, the FAA will continue to define the end of a launch as the point after payload separation when the last action occurs over which a licensee has direct or indirect control over the launch vehicle. For a liquid-fueled stage, that point may be when any remaining fuel is emptied from the upper stage, the vehicle propellant and gas tanks are vented and other stored energy is released. For solid rocket motors, that point may arrive when the upper stage fuel is expended or the stage is inert, and the payload is released. For purposes of ground operations, launch no longer ends with the cessation of supporting ground operations but when the vehicle leaves the surface.

With respect to flight, others apply different definitions to the end of launch. The most recent House Committee Report, H.R. Rep. No. 347, 105th Cong., 1st Sess., 22 (1997), suggests that launch ends when a payload is placed into orbit or in its planned trajectory in outer space. The 45th Space Wing considers a launch complete when all hazardous activities are secured and, for purposes of flight safety, upon orbital insertion. NPRM, 62 FR at 13223. Orbital insertion takes place when a launch vehicle achieves orbital velocity or when its instantaneous impact point leaves the earth. In other words, orbital insertion is achieved when a launch vehicle is moving horizontally to the earth's surface sufficiently fast enough, given its altitude, to counteract the effects of the earth's gravity. The FAA believes that although defining launch to end at orbital insertion may make sense from a federal range ''flight termination'' perspective, such a definition would halt FAA oversight of certain aspects of launch too soon for safety. For example, damage to other orbiting material may still ensue as the result of activities subsequent to orbital insertion. Absent a licensee taking appropriate measures, risk exists of the possible collision of a launch vehicle or its components with other objects in space. Additionally, dangerous orbital debris might be generated. Accordingly, in the interests of safety, the FAA will retain its current practice of defining the cessation of launch.

With respect to ground operations, the FAA now changes its current practice of including post-flight ground operations for expendable launch vehicles in a launch license and thus as part of launch. Instead, ground operations are no longer part of launch once the vehicle leaves the ground. The FAA considered several options as to when ground operations were no longer considered part of a launch. Under the chosen option, ground operations would not be considered part of launch once the launch vehicle left the ground. Reentry activities aside, it has not been the FAA's experience that post-flight activities involve the same levels of public safety risk as pre-flight handling, integration and fueling of a vehicle. The FAA reviewed another option. Ground operations for launch could end with the end of launch in the context of flight, namely, when the last action occurs over which a licensee has direct or indirect control over the launch vehicle. This alternative would have allowed for at least part of the post-flight ground operations to be covered by the license. The end of launch for purposes of flight is not, however, related to activities on the ground. The FAA is concerned that attempting to create such a connection would be arbitrary and might inappropriately influence a licensee's post-flight ground operation procedures. The third option the FAA considered was to define the end of ground operations for launch as that point at which all personnel may resume operations at the launch pad and related environs. This approach recognized that hazardous operations do occur subsequent to ignition and lift off. These operations include such activities as securing ground propellant and pneumatic systems and inspecting the launch pad to verify that no post-flight hazards exist. With this option, ground operations would no longer have been part of launch when the launch pad and other launch related facilities no longer endangered personnel. Because, however, the hazards associated with ground operations subsequent to lift off are not related to the preparation of the vehicle for flight, the FAA defines the end of launch for purposes of ground operations as the point at which the launch vehicle leaves the ground. This analysis applies to expendable launch vehicles. For the time being, judgment is reserved with respect to reusable launch vehicles.

Formalizing Launch and Launch Operator Licenses

This rulemaking, through section 415.3, codifies the FAA practice of issuing two types of launch licenses, the launch-specific and the launch operator, and amends the duration of a launch operator license from two to five years. In order to enable the FAA to issue a license for a single mission or for multiple missions, the FAA's licensing structure provides for two types of launch licenses, the launch-specific and the launch operator license. A launch specific license authorizes a licensee to conduct a single launch, or a specified

[7] In 1994, a House Space, Science and Technology Committee Report expressed the same sentiments. The report accompanied H.R. 4489, the NASA Authorization Act for Fiscal Year 1995, a bill that was not enacted into law.

number of identical launches, from a single launch site. The launch vehicle for each authorized launch must be the same and launch parameters must present no unique public safety issues or other issues affecting U.S. national interests. The licensee's authorization to conduct launches terminates upon completion of all launches authorized by the license or the expiration date set forth in the license, whichever comes first. A launch operator license authorizes a licensee to conduct launches from a specified launch site, using the same family of launch vehicles, carrying specified classes of payloads, within the range of launch parameters defined by the license.

Initially, the FAA's launch operator license allowed a launch operator to conduct launches authorized by its license for a period of two years. Under the new section 415.3(b), a launch operator license authorizes the conduct of launches for five years from the date of issuance.

The option of issuing a launch operator license, as opposed to requiring a launch-specific license for every launch, provides advantages both to the licensee and to the FAA. Although the application preparation for and review of a launch operator license will be more extensive than for a launch specific license, use of this class of license will ultimately result in cost reductions and efficiency gains for licensees by reducing the number of applications that a company with an active launch schedule must submit, and that the FAA must review. The FAA's increase of the term of a launch operator license from the current practice of two years to five years reflects the FAA's experience with its licensees during the past few years. During that time, the FAA has encountered very few serious safety problems with launch operator licensees.

On the basis of this record, the FAA proposed in the NPRM that a launch operator with a safe launch record should not be required to apply for a new license every two years. The FAA will continue to verify, through compliance monitoring, that a licensee is operating in accordance with the terms and conditions of its license. In this regard, the longer the license term, the more important the role compliance monitoring plays in enabling the FAA to provide safety oversight regarding how a licensee implements its procedures.

The FAA received comments regarding the duration of a launch operator license. Several launch operators supported the proposed increase from two to five years. Boeing at 1; *Lockheed Martin* at 7; *Orbital Sciences* at 6; *Rotary Rocket Company* at 4–5 (while emphasizing its need for a launch operator license for a reusable flight test program); *Space Access* at 6. Kistler Aerospace Corporation requested that the FAA consider issuing launch operator licenses of indefinite duration. *Kistler* at 4. Kistler maintains that the choice of five years is arbitrary and of little utility in regulating a licensee. *Id.* Kistler notes that the proposed regulations vest the FAA with continuing oversight powers, require a licensee to ensure the continuing accuracy of its application representations and allow the FAA to amend the terms and conditions of a license at any time. *Id.* Kistler claims that renewing a license every five years poses an unnecessary burden and creates an uncertainty that adversely affects a licensee's ability to enter into contracts, attract capital and otherwise make long term plans. *Id.*

Although the FAA appreciates the issues raised by Kistler, the FAA will increase the duration of a launch operator license from two to five years as originally proposed rather than creating a license of indefinite duration. This is because an increase in duration from two to five years already place greater reliance on the FAA's compliance monitoring program. A license renewal application has the benefit of compelling the FAA and a licensee to perform a comprehensive review of a licensee's operations. Experience has shown that a renewal process ensures that oversight is performed.

Space Access raises a separate issue, namely the question of how the FAA will determine who is qualified for a launch operator license as opposed to a launch-specific license. Space Access asks what constitutes a safe launch record. To this, the FAA is able to respond with some guidance culled from its past practices. The FAA licensed the first launch of a Pegasus launch vehicle on a launch-specific basis. It is currently contemplating a launch-specific license for Sea Launch's proposed first launch from the Pacific Ocean. Other examples of launch-specific licenses include the first launches of Lockheed Martin's LMLV–1 and 2, EER's Conestoga launch and AMROC's hybrid launch vehicle launch. To date, the FAA has not considered a new launch operator one with a safe launch record. A new launch operator has no record.

Although a launch-specific license might be required for a new vehicle, an established operator may apply for a launch operator license after the first launch, but a newer entity may have a greater showing to make. A first launch may be safe without being successful. A first launch LMLV–1 failure that demonstrated that a safety system worked led to a launch operator license for Lockheed Martin. Historically, launch operators who received launch operator licenses had already demonstrated some level of capability in conducting launches, either by conducting launches for the government or with other launch vehicles.

The FAA policy of considering an applicant for a launch operator license after a safe launch conducted under a launch-specific license has, to date, applied to launches from federal launch ranges. This policy may not always be appropriate under other circumstances. The complexity of the proposed operations, whether a vehicle is reusable and the potential for endangering the public may also play a role in whether the FAA decides a launch operator license is appropriate for subsequent launches.

Space Access also asks whether an overall accident history of approximately ten to fifteen percent is acceptable. The FAA has not made a determination regarding an acceptable mishap rate at this point, and is hesitant to prejudge the question. The answer may turn more on the facts underlying a mishap rather than on a particular rate. The FAA would also like to stress what it defines as a launch accident. By definition, a launch accident is an unplanned event occurring during the flight of a launch vehicle resulting in the known impact of a launch vehicle, its payload or any component thereof outside designated impact limit lines, or a fatality or serious injury to any person who is not associated with the flight, or resulting in damage estimated to exceed $25,000 to property not associated with the flight. This has rarely, if ever, happened in the history of the U.S. space program. Space Access appears to be referring to other mishaps such as mission failures that are not launch accidents. An unsuccessful mission is not necessarily an un-safe flight. In fact, a successful mission may not even be a safe one, as recognized by the FAA's definition of ''launch incident,'' which is an unplanned event occurring during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or failure of the licensee's safety organization, design or operations. Because the FAA is concerned with public safety, a safe launch record is judged based on whether an applicant's launches have placed the public at risk,

not whether the launches have placed payloads in space.

Space Access contends that any launch accident, incident or mishap should result in a license amendment reflecting changes made to prevent a reoccurrence. If circumstances warrant, this may prove a likely result. Space Access also asks whether a launch operator accident that is not covered by an FAA license, that is, perhaps, a government launch, is considered part of a licensee's accident history, and whether an accident would result in a license revocation. An un-licensed launch resulting in a mission failure may certainly raise safety concerns for future licensed launches, but need not necessarily lead to license revocation. When a mishap occurred with McDonnell Douglas' Delta vehicle in January 1997, during a government launch, the FAA did not revoke, suspend or modify McDonnell Douglas' launch operator license. This was because McDonnell Douglas' license specified that it comply with the requirements of the federal launch range from which it was authorized to launch, and the FAA knew that the Air Force would not allow additional Delta launches to take place until the problem was identified and resolved. Space Access' inquiry arises, perhaps, out of contemplating launch activity that is not governed by federal launch range oversight. To avoid prejudging a hypothetical situation, the FAA will not address that situation until confronted with it.

Relationship Between FAA and Federal Government Launch Ranges

The FAA's launch requirements as promulgated through part 415, subpart C, of this rulemaking apply to launches as they currently take place from Department of Defense (DOD) or NASA launch ranges. Public meeting comments strongly supported avoidance of duplication of launch safety oversight for launches that take place from a federal launch range. The rules are consistent with that desire. Although the FAA requires information and analyses not required by federal launch ranges to ensure that all flight safety issues are addressed, and imposes certain additional requirements derived from a National Transportation Safety Board investigation, the FAA will not duplicate the safety assessments performed by federal launch ranges.

Federal launch ranges manage the launch facilities from which the great majority of commercial launches now take place. The federal ranges act, in effect, both as landlords and as providers of launch facilities and services. The ranges require compliance with their safety rules as a condition of using their facilities and services. Because different federal launch ranges confront different safety issues, practices are not always standardized; the Air Force ranges did, however, produce a joint set of documentation requirements and procedures, ''Eastern and Western Range Requirements 127–1'' (Mar. 1995).[8] In addition to providing for public safety, the federal launch range procedures protect government property and launch capability, and are designed, to some extent, to ensure mission success.

The FAA fully recognizes the comprehensive and responsible safety oversight that DOD and NASA have exercised at their ranges for over forty years. The FAA communicates on an ongoing basis with the federal launch ranges regarding standards and launch activities. The FAA also recognizes the scope of information that a launch operator employing federal range services must submit for approval over a two to three year period in order to conduct launch operations. Therefore, for launches that take place from DOD or NASA launch ranges, the FAA's regulatory program makes maximum use of information provided by an applicant to the federal launch range and of federal launch range analyses and approvals. This means that the FAA relies on the processes of the federal launch range and does not duplicate those safety analyses conducted by a federal launch range.

A federal launch range requires a launch operator to provide data regarding its proposed launch. The range evaluates the data to ascertain whether the launch operator will comply with range requirements. The range also uses the data to prepare range support for the mission. DOD ranges require that a launch operator apply for and obtain specific mandatory approvals from the range in order to conduct certain specified operations. For example, the Air Force's Eastern and Western Range Requirements 127–1 require a launch operator to obtain approvals for hazardous and safety critical procedures before the range will allow those operations to proceed. In the event that a launch operator's proposal does not fully comply with range requirements, a range may issue a deviation or a waiver if the mission objectives of the launch operator could not otherwise be achieved. A range may issue a deviation to allow a launch even when a launch operator's designs or proposed operations do not comply with range requirements. A range may issue a waiver when it is discovered after production that hardware does not satisfy range requirements or when it is discovered that operations do not meet range requirements after operations have begun at a federal range. A range will allow a deviation or grant a waiver only under unique and compelling circumstances, or when the intent of the range requirements is met.

The FAA's baseline assessments[9] of various federal launch ranges found their safety services adequate. The FAA will not require an applicant to demonstrate the adequacy of the range services it proposes to employ if the applicable baseline assessment included those services and if those services remain adequate. Certain showings regarding the applicant's own capabilities are still required. The FAA requires specific information regarding the interface between the safety organizations of a federal launch range and of an applicant. In the event that a service or procedure upon which an applicant proposed to rely was not within the documented experience of the federal launch range that the applicant proposed to utilize, the applicant would have to demonstrate the safety of that particular aspect of its launch. This is also true if a documented range safety service has changed significantly or has experienced a recent failure. In those cases, the burden of demonstrating safety shifts to the applicant.

The revisions also codify FAA guidelines containing National Transportation Safety Board (NTSB) recommendations concerning launch readiness and countdown procedures. The FAA's guidelines implement NTSB recommendations made following an investigation of a commercial launch anomaly occurring during a launch from a federal launch range. These guidelines are designed to ensure that a launch licensee has clear lines of authority and communication during launch, and has specific procedures governing other safety aspects of its launch operations. The NTSB filed comments to the docket stating that the regulations proposed in the NPRM would, if implemented, satisfy the intent of the NTSB's

[8] The latest version of these requirements may be found at http://www.pafb.af.mil/45SW/rangesafety/ewr97.htm. The Air Force up-dates its requirements on an ongoing basis.

[9] ''Commercial Launch Baseline Assessment, NASA Goddard Space Flight Center, Wallops Flight,'' DOT (Oct. 1989); ''Commercial Launch Baseline Assessment, U.S. Air Force Western Space and Missile Center,'' DOT (Jul. 1989); ''Commercial Launch Baseline Assessment, U.S. Air Force Eastern Space and Missile Center,'' DOT (Sept. 1988).

recommendations. Accordingly, the NTSB supports their adoption.

Discussion of Parts Affected by the Rule

Part 401—Organization and Definitions

Section 401.5 contains definitions of significant terms used in the FAA's regulations. Proposed amendments include both changes to existing definitions and the addition of new terms. Certain changes are intended only to reflect changes resulting from the 1994 codification of the Act. Others are editorial.

Deletions

The FAA proposes to remove the terms ''Director,'' ''launch activity,'' ''licensee,'' ''mission,'' and ''safety operations.'' ''Director'' no longer constitutes a title related to the FAA's Associate Administrator for Commercial Space Transportation and is therefore deleted. ''Launch activity'' refers to activities licensed by the FAA. The term is overly broad and lacking in specificity. ''Licensee'' is also deleted as a term whose meaning is self-evident. ''Mission'' is no longer necessary because the FAA is modifying and renaming the mission review contained in part 415, subpart C. ''Safety operations'' does not appear in the regulations and the FAA has therefore removed it.

Revisions

Some of the proposed revisions merely reflect the codification of the Act. These include ''Act,'' ''launch,'' ''launch vehicle,'' ''payload,'' and ''person.'' The FAA revises the term ''launch,'' however, not only to reflect the codification of Pub. L. 98–575 and the Commercial Space Act of 1998, but to clarify that launch, for purposes of licensing, includes the flight of a launch vehicle and preflight activities commencing with the arrival of a launch vehicle at a U.S. launch site as discussed earlier.

As noted in the NPRM, the FAA proposed to change the definition of ''launch vehicle'' to reflect the changes made to the Act when it was codified in 1994. This rulemaking implements that change. Space Access provides an interesting analysis of one of the constituent parts of a launch concerning an element that the NPRM did not address in detail, namely, that vehicle stages are part of launch. ''Space Access believes anything that does not achieve orbit should be considered as part of launch, just like multiple stage boosters are today.'' *Space Access* at 5. Space Access points out that if the FAA's intent is to cover the hazardous elements of launch, ''the return of any boosters is pertinent.'' *Id.* at 5–6. For these reasons, the FAA's proposed definition of launch vehicle should clearly encompass ''all physically connected parts used to propel or to otherwise place [a] launch vehicle and any payload into an Earth orbit or otherwise in outer space.'' *Id.* at 5. Space Access believes that its proposed definition would clearly encompass first stage boosters that fall back to earth and a carrier aircraft such as is used to launch a Pegasus. *Id.*

Under the Act, launch vehicle means ''(A) a vehicle built to operate in, or place a payload in, outer space; and (B) a suborbital rocket.'' 49 U.S.C. § 70102(7). Congress chose this definition, and the FAA designed the new regulatory definition to match the congressional choice. Space Access fears that the definition could imply that only the parts of a launch vehicle that reach outer space are part of a launch vehicle, thus excluding both the carrier aircraft for an air launch and any vehicle stages that fall back to earth. *Space Access* at 5. The definition does not preclude the inclusion of carrier aircraft or vehicle stages as part of the definition of launch vehicle. The FAA agrees with Space Access that vehicle stages are included within the definition of a launch vehicle. It should be noted that because the definition includes a vehicle that either operates in or places a payload in outer space, the definition includes the entire vehicle necessary to accomplish that objective. This necessarily includes the first and intermediate stages of a launch vehicle. Therefore, the FAA will not change what it proposed as the new definition of ''launch vehicle'' with the exception that it will change ''and'' to ''or'' to clarify that a suborbital rocket is also a launch vehicle.

Additions

New terms include ''Associate Administrator,'' ''federal launch range,'' ''hazardous materials,'' ''launch accident,'' ''launch incident,'' ''launch operator,'' ''launch site,'' and ''mishap.'' Although the NPRM proposed ''Office,'' that term is no longer included.

''Associate Administrator'' reflects a change in title of the person in charge of Commercial Space Transportation within the FAA and arises out of the transfer of the Office of Commercial Space Transportation from the Office of the Secretary, DOT, to the Federal Aviation Administration. The term describes the FAA's Associate Administrator for Commercial Space Transportation.

''Federal launch range'' means a launch site from which launches take place that is owned and operated by the government of the United States. Federal launch ranges include Cape Canaveral Air Station, Vandenberg Air Force Base, White Sands Missile Range and Wallops Flight Facility. In its comments, Kistler Aerospace Corporation recommended that the FAA clarify that only these four facilities constitute federal launch ranges. The FAA is not prepared to do this, but will reach a separate accommodation. The FAA agrees that the definition of a federal launch range should only encompass those federal launch facilities where the government facilities, services and organization routinely support launch activities. The four listed above, however, are not the only current ones, and others could emerge in the future.

The FAA assumes that Kistler's interest in this topic arises out of its proposed launch plans for the Nevada Test Site, which is not currently a federal launch range. The Nevada Test Site should not, in its current operational status, be considered a federal launch range because the U.S. government does not routinely oversee the launch of launch vehicles from the site. Although it is true that the U.S. government has conducted launches from the site, this does not mean that the Nevada Test Site is a federal launch range for purposes of this rule because the activities that have occurred there are not routine. No staff is dedicated to routinely supporting launch activity, and the FAA is not aware of any permanent launch infrastructure at the site. Nor is the Nevada Test Site a member of the Range Commander's Council. Accordingly, the FAA here clarifies its definition by adding ''routinely.''

''Hazardous materials'' mean hazardous materials as defined in 49 CFR § 172.101.

''Launch accident,'' ''launch incident,'' and ''mishap'' all address related issues. The term ''mishap'' is a general term for all unplanned events at a launch site or during a launch resulting in injury, occupational illness, or damage to or loss of equipment or property. Mishaps include but are not limited to launch accidents and launch incidents. Launch accidents and launch incidents are types of ''mishaps.'' ''Launch accident'' and ''launch incident'' derive from the FAA's current definition of ''accident'' and ''incident'' as the terms appear in the FAA's accident investigation plan. Both terms encompass unplanned events occurring during flight. ''Launch accident'' is

defined by the seriousness of the results, and ''launch incident'' focuses on the failure of a safety system or process that may or may not have caused serious harm. Special reporting and investigation requirements attach if a launch accident or incident occurs. ''Accident'' is also defined in a Memorandum of Understanding with the National Transportation Safety Board (NTSB). A launch accident will entail NTSB involvement. A ''launch incident'' may or may not involve the NTSB, depending on the seriousness of the safety issues involved. Other mishaps, such as a mission failure, have fewer reporting and investigation requirements.

Orbital raised a concern regarding the reporting requirements for a mishap. *Orbital* at 5. It noted that, if read literally, section 415.41 would require FAA notification every time a piece of the licensee's own equipment was damaged. The FAA does not require this and now amends its definition of mishap from that originally proposed in the NPRM to include only a launch accident, a launch incident, failure to complete a launch as planned, or an unplanned event resulting in fatal or serious injury or greater than $25,000 damage to a payload, a launch vehicle, a launch support facility, or government property located at the launch site. The notification requirement has also been modified for mishaps other than launch accidents and launch incidents. For a mishap that is not a launch accident or launch incident, or one that does not involve a fatality, a licensee must notify the FAA within 24 hours of the event. Such mishaps may involve insurance claims or may uncover flaws in a licensee's safety procedures.

''Launch operator'' is defined as a person who launches or plans to launch a launch vehicle and any payload.

The definition of ''launch site'' reflects changes resulting from the codification of the Act and a subsequent revision. The definition of ''launch site'' in the original Commercial Space Launch Act includes ''facilities located on a launch site which are necessary to conduct a launch.'' 49 U.S.C. App. 2603(5) (emphasis added). As noted in the NPRM, the codified definition of ''launch site'' merely included ''necessary facilities'' with no mention of their location. Now, Congress has remedied that oversight, and the definition of ''launch site'' means the location on Earth from which a launch takes place and necessary facilities *at that location*. 49 U.S.C. 70102(6) (emphasis added). The FAA correctly proposed to include only those facilities located at the launch site. In order, however, to reflect accurately the new language of the codified statute, the FAA's definition of launch site will not, as proposed in the NPRM, include ''necessary facilities located at the site,'' but ''necessary facilities at that location.''

The FAA will not include the term Office in its definitions as originally proposed in the NPRM. There is greater familiarity with the term ''FAA'' and the agency believes that its use will result in less confusion.

Part 411—Policy

The FAA deletes as unnecessary and reserves part 411, which establishes the policies of the FAA for licensing commercial launch activities. This part identified how the FAA addressed safety and mission reviews, which, pursuant to this rulemaking, are addressed in parts 413, 415 and 417.

Part 413—License Application Procedures

Part 413 continues to describe those license application procedures applicable to all license applications. As explained by section 413.1, which clarifies the former section of the same number, the procedures apply to any application for a license to launch a launch vehicle or to operate a launch site. These procedures should also be used by a payload owner or operator requesting a payload review. More specific requirements applicable to obtaining a launch license or a license to operate a launch site are set forth in parts 415 and 417, respectively. The majority of the revisions to this part are editorial or self-explanatory. A few bear individual mention.

Section 413.3, which renumbers the former section 415.3 and amends the provision by including operation of a launch site, identifies who must obtain a license to launch a launch vehicle or to operate a launch site. Any person proposing to launch a launch vehicle or to operate a launch site within the United States must obtain a license authorizing the launch or the operation of the launch site. 49 U.S.C. § 70104(a)(1). A U.S. citizen or entity proposing to launch outside the United States or to operate a launch site outside of the United States must obtain a license authorizing the launch or the operation of the launch site. 49 U.S.C. § 70104(a)(2). A foreign corporation, partnership, joint venture, association or other foreign entity controlled by a U.S. citizen and proposing to launch from, or to operate a launch site within, international territory or waters must obtain a license if the United States does not have an agreement with a foreign nation providing that the foreign nation shall exercise jurisdiction. 49 U.S.C. § 70104(a)(3). A foreign corporation, partnership, joint venture, association or other foreign entity controlled by a U.S. citizen does not require an FAA license to launch from foreign territory, unless that foreign nation has agreed that the United States shall exercise jurisdiction over the launch. 49 U.S.C. § 70104(a)(4).

Section 413.5, which renumbers and amends the former section 413.3, requires a prospective applicant to consult with the FAA prior to submitting an application. Pre-application consultation is now mandatory in order to allow both an applicant and the FAA the opportunity to identify potential issues relevant to the FAA's licensing determination. Pre-application consultation does not possess a formal structure or timetable. Nor does it require personal meetings. For many proposals consultations may be made by telephone, electronic mail or other means.

Pre-application consultation is intended to provide an efficient and effective process leading to the development of a substantially complete application. It should also ensure that an applicant is aware of the responsibilities of a licensee. Pre-application consultation allows a prospective applicant to familiarize the FAA with its proposal and the FAA to familiarize the prospective applicant with the licensing process. It has been the FAA's experience that pre-application consultation helps speed the overall licensing process by ensuring that any unique safety issues are uncovered early. It also avoids potentially wasted efforts by a prospective applicant in preparation of an application. For new launch concepts, the pre-application process allows a prospective applicant and the FAA's Commercial Space Transportation Licensing and Safety Division to identify the most efficient process for the applicant to demonstrate the safety of any proposed launch. Experience shows that this often is best carried out through a series of meetings, and other interchanges, each focusing on different issues. The schedule and order of such discussions is nearly always driven by a prospective applicant's concept, issues and schedule. In all cases, the FAA encourages the proposed applicant to submit, as part of the process, application material in draft, and the FAA will review and provide feedback on the content.

Although the FAA will answer general questions regarding the licensing process at any time, the pre-

application process is best begun when a prospective applicant is ready to discuss specific application requirements or to begin preparation of an application. At this time, the Licensing and Safety Division will assign a primary staff engineer who will be responsible for working with the prospective applicant. Typically, a second engineer is also assigned to track the project and to be available should the primary engineer not be available. Other support staff may also be assigned to help in specialized areas such as environmental reviews.

Section 413.7, which renumbers and amends the former section 413.5, contains a change in the name of the entity regulating commercial space transportation. Effective November 15, 1995, the DOT Office of Commercial Space Transportation became a part of the Federal Aviation Administration, where it now operates as the FAA's seventh line of business. With that move, the name was changed from the Office of Commercial Space Transportation to that of the Associate Administrator for Commercial Space Transportation. Section 413.7(a), which directs an applicant where to file an application, reflects that change, as well as the new address. Section 413.7(b)(2) requires an applicant to provide the FAA with one or more points of contact to receive notices from the FAA.

Section 413.9, which renumbers the former section 413.7, describes how an applicant may request confidential treatment for trade secrets or proprietary commercial or financial data. The treatment of confidential information is governed by applicable law, including the Freedom of Information Act.

Section 413.11, amending former section 413.9, describes the process by which an application is accepted or rejected. Section 413.11(a) provides for an initial screening of an application in order for the FAA to determine whether the application is sufficiently complete to allow the FAA to initiate the required reviews. The Act requires the FAA to complete its evaluation of an application within 180 days. The FAA determines when an application is sufficiently complete for the 180 days review period to commence and how those 180 days will be measured. If the FAA receives an application that fails to provide sufficient information for the FAA to commence a meaningful review, then a review cannot be performed. The FAA returns applications that are not substantially complete, noting the areas of deficiency. Accordingly, the 180-day review period will start to run only upon receipt of an acceptable application.

The FAA considered the option of not commencing any review of an application and thus of not starting to count the 180-day statutory time limit until the application was complete in order to ensure that the FAA did not receive piecemeal applications. The FAA also considered rejecting or denying an incomplete application, which would also prevent the 180-day review period from commencing. Instead, the FAA determined that if an applicant presented sufficient material to allow at least some meaningful review to commence, the FAA would do so in the interests of the applicant. Commencing the review of even an incomplete application should allow for earlier identification of required information not addressed, hasten the process and increase efficiency.

In order for the FAA to review an application, however, the application must be sufficiently complete to allow review to commence. Accordingly, under section 413.13, the FAA's acceptance of an application does not constitute a determination that the application is complete. That section now contains an additional provision that was not explicit in the NPRM. The new provision clarifies that the FAA may ask for additional information in the course of the licensing process. It states that if, in addition to the information required by the applicable parts of this chapter, the FAA requires other information necessary for a determination that public health and safety, safety of property and national security and foreign policy interests of the United States are protected during the conduct of a licensed activity, an applicant shall submit the additional information required to show compliance with this chapter. The FAA anticipates that there will be situations where an applicant's proposal contemplates activities, vehicle configurations or technologies not envisioned in the course of this rulemaking. In that case, it is necessary for the regulations to reflect clearly the FAA's authority to request additional information prior to issuing a license.

Although review of an incomplete application may commence, section 413.13 requires an applicant to complete an incomplete application, and section 413.15 allows for tolling in the event an applicant does not submit the remaining material in sufficient time to avoid affecting the evaluation process. Section 413.15, a new provision, tolls, or stops the clock of, the review period of 180 days when an applicant fails to provide information required for the FAA to complete its review. Although the FAA will commence its application review once it receives a substantially complete application, the fact that an application is only substantially complete means that more information may be required before the application is entirely complete. If an application does not address requests for required information in sufficient detail, or if the application contains inconsistencies, the FAA will advise the applicant and provide a time by which the requested information must be provided. Once the deadline has passed, and while the FAA waits for any information necessary to complete its review, the 180-day time limit on the FAA does not run. The FAA considered the option of denying a license and returning the application for resubmission if the requested information were not submitted within the time provided. Because of the new submission of the application, a new 180-day review period would commence. This course would provide the applicant a strong incentive to respond to the FAA's information request in a timely fashion, and, perhaps, result in the processing of only those applications where the applicant possesses the actual capacity to respond. This would discourage frivolous applications. The FAA determined, however, that most applicants, provided with information regarding how soon the FAA would require information necessary to complete a review, would respond in the time allotted. Thus, so extreme an incentive would not be required. However, it has been the FAA's experience that applicants do not always respond in a timely fashion to requests from the FAA for clarification or additional information. Accordingly, some incentive to respond promptly is necessary, and in the event an applicant fails to respond within the time provided, the FAA will toll the 180-day statutory review period.

Both Orbital and Rotary Rocket objected to this provision. *Oribital* at 5; *Rotary Rocket* at 5. Neither, however, proposed a different solution for addressing the problem of an applicant not supplying requested information in a timely fashion. For the reasons discussed above, the FAA adopts the tolling provision.

Section 413.17, which renumbers and amends former section 413.19, describes an applicant's responsibility for the continuing accuracy and completeness of the information contained in the applicant's license application. Orbital objects to requiring that an applicant update its application any time it is no longer accurate and complete in all respects, and recommends retaining the

language of former section 413.19. *Orbital* at 6. The FAA agrees that it need not be advised of any and all changes, and will therefore incorporate a materiality standard. An applicant should note, however, that the FAA considers a great majority of the information required for an application to be material. Otherwise, the FAA would not require that information. An applicant must advise the FAA in a timely manner of any proposed material change in any representation contained in its application, including, without being limited to, its launch plans or operations, launch procedures, classes of payloads, orbital destinations, safety requirements, the type of launch vehicle, flight path, launch site, and launch point, or any safety related system, policy, procedure, requirement, criteria or standard, related to commercial space launch or launch site operation activities, that may affect public health and safety, the safety of property, including government property, or hazards to the environment. Because the FAA proposes to rely upon federal launch ranges for launches from those sites, an applicant must also notify the FAA in a timely manner in the event the applicant applies to the federal range for a waiver to, or deviates from the federal range's safety requirements or procedures.

Changes to an application may lengthen the time that the FAA requires to complete its reviews in support of a license determination. The FAA will reserve to itself the right to toll the 180-day review period in the event that any amendment to an application so radically changes the applicant's proposal that the change, in effect, constitutes a new application. The FAA's experience, however, has been that most amendments, while important, have a relatively minor impact on the processing time, particularly if those amendments are submitted in a timely manner.

Section 413.19 addresses issuance of a license.

Section 413.21 contains the procedures employed by the FAA when it denies an applicant a license, and describes the recourse available to that applicant. An applicant may attempt to correct the deficiencies that resulted in the denial of its application and request reconsideration of its application, or it may request a hearing to show why the application should not be denied.

Section 413.23 allows a licensee to apply for renewal of an expiring license. A licensee seeking authorization to conduct activities that are substantially different from those authorized under the expiring license is not eligible for renewal of the license and must apply for a new license.

Part 415—Launch License

Part 415 establishes requirements applicable to obtaining a license to launch a launch vehicle and establishes post-licensing requirements. The provisions of this part apply to prospective and licensed launch operators and to prospective payload owners and operators, and should be read in conjunction with the general application requirements of part 413. This part replaces and amends the former part 415. A flow chart of the launch license application process is provided in Figure 1.

Subpart A describes the scope and types of launch licenses, required approvals or determinations, and procedures governing issuance or transfer of a launch license. Like the former section 415.1, the new section 415.1 explains that part 415 prescribes requirements for obtaining a launch license and adds that it prescribes post-licensing requirements. Section 415.3, a new provision arising out of this rulemaking, addresses the types of launch licenses issued, as discussed previously.

Sections 415.5 and 415.7 identify the approvals and determinations required to qualify for a launch license. These sections require a license applicant to obtain policy and safety approvals from the FAA. Section 415.7 constitutes an administrative change, although the FAA has conducted payload reviews in the past. This provision requires an applicant to obtain a payload determination unless the payload is otherwise exempt from FAA consideration. The owner or operator of the proposed payload may also apply for a payload determination. Only a launch license applicant may apply for safety and policy approvals, and, as with former section 415.5, may apply for either approval separately and in advance of submitting a complete license application. An applicant applying for a separate approval should note, however, that some of the information described as required for one approval may be necessary for a different approval. In order to avoid duplication, the FAA is requesting only once material that is relevant to more than one review. For example the information required by section 415.25 is germane to an FAA safety review although it is also pertinent to a policy review.

In addition to the approvals and determinations that the FAA requires of an applicant for a launch license, an applicant should bear in mind that the National Environmental Policy Act (NEPA) requires the FAA, prior to considering a license application, to perform environmental reviews of major federal actions such as issuing a launch license. Accordingly, if a proposed launch vehicle is not otherwise already encompassed by a 1986 Programmatic Environmental Assessment of Commercial Expendable Launch Vehicle Programs, then NEPA may direct the FAA to perform an additional environmental review. No other approvals or determinations are required from the FAA in order for an applicant to obtain a license for launch of a launch vehicle.

This subpart also contains new provisions for issuance and transfer of a launch license. Once an applicant has obtained all required approvals, the FAA will issue a launch license under section 415.9.

Section 415.11, a new provision, allows the FAA to modify a launch license at any time by modifying or adding terms and conditions to the license to ensure compliance with the Act and regulations. Although standard license terms and conditions, contained in subpart E, apply to all licensees, it is the experience of the FAA that a particular licensee's launch may present unique circumstances which apply only to that licensee. In that event, the FAA may issue or modify a license with terms and conditions not identified in subpart E to protect public health and safety, safety of property, U.S. national security and foreign policy interests, or international obligations of the United States. A licensee may also initiate license modification.[10]

Under section 415.13, a new provision, only the FAA may transfer a license, and only upon application by the transferee. The prospective transferee must satisfy all requirements for obtaining a license as specified in parts 413 and 415.

Subpart B describes the requirements for a policy review. To date a policy review has been known as a mission review under former sections 415.21–415.25. Because the FAA now separates a payload determination from any mission review, it is changing the name of the review to policy review to more accurately identify its purpose. Under sections 415.21 and 415.23, a policy

[10] Should a licensee wish to protest an FAA modification of its license, it is entitled to a hearing pursuant to section 406.1(a)(3) of part 406. In the event safety requires that additional terms and conditions be applied to all licensees, the FAA would revise subpart E by rulemaking to implement any such standardized terms. As provided in part 415, a licensee may request modification of its license to reflect changes in its proposed launches.

review addresses whether some aspect of a proposed launch presents any issues affecting U.S. national security or foreign policy interests or is inconsistent with international obligations of the United States. Specific launch safety issues will be addressed only in a safety review although the FAA will address payload safety issues in the course of a payload determination. Only a launch license applicant may request a policy approval. An applicant must provide the information required by subpart B so that the FAA may review those aspects of an applicant's launch proposal that are not related to safety. The FAA coordinates this review with other government agencies, including the Departments of Defense, State, and Commerce, the National Aeronautics and Space Administration and the Federal Communications Commission. Space Access questioned the inclusion of NASA in the policy review. *Space Access* at 12. Space Access states that NASA does not determine U.S. national security, foreign policy or questions of international obligations. *Id*. The FAA's experience has been that NASA, as the primary civilian government launch operator, often offers insights of value with respect to issues of concern. The FAA plans to continue to consult with NASA for a number of reasons. NASA has a long history of launching expendable launch vehicles, and currently operates the Space Shuttle. NASA also operates a federal launch range . NASA procures launch services from the private sector for a wide range of satellites and space probes. Also, NASA has programs and assets that it may wish to bring to the FAA's attention in the context of a particular launch. Accordingly, NASA will remain one of the agencies regularly consulted regarding any launch license application.

An applicant may choose to submit an application for policy review separately from its license application, or, as do most applicants, it may submit a complete license application. The FAA will allow separate submission of a request for a policy review because of the possibility that an applicant might be uncertain about policy issues surrounding its proposal, and might wish to allay concerns over reactions to any proposed launch. An applicant might then request only a policy review prior to undertaking the additional effort necessary to prepare a complete license application. Past experience indicates that the FAA accomplishes these reviews relatively quickly in comparison with a safety review.

Section 415.25, a new provision, describes the information an applicant must provide to obtain a policy approval. As described in the NPRM, the information required reflects current FAA information requests. The FAA requires this information in order to inform it and other agencies of what is being launched, by whom, for what purpose, and where a vehicle and its payload are going. The State Department, for example, may identify overflight issues regarding particular countries.

Accordingly, the FAA requires that an applicant supply sufficient information to describe a proposed launch vehicle and its mission. The information requested by paragraph 415.25(b) is required in the event there are any policy issues surrounding the launch vehicle itself. The FAA requires a brief description of the launch vehicle, including the propellants used and the vehicle's major systems, such as its structural, pneumatic, propulsion, electrical or avionics systems. Policy questions may arise, for example, over the use of nuclear power, or the Department of Defense may have concerns over the allocation of resources to a commercial launch if a sole source manufacturer is involved.

The information requested by paragraph 415.25(c)(2), that an applicant identify any foreign ownership interests of 10% or more means that an applicant must identify any foreign owner possessing a ten percent or greater interest in a license applicant. This provision is intended to provide the FAA and the Departments of State and Defense the identities of foreign interests involved in a licensed launch. The Departments of State and Defense have interests in foreign involvement in the U.S. launch industry, including, for example, issues surrounding technology transfer and national security. The FAA believes that a ten percent ownership interest is sufficiently high for a foreign owner to be able to influence a prospective licensee. The FAA is aware that a publicly traded corporation will not always know the identity of each of its smaller shareholders. However, such an applicant should be aware of any shareholders possessing that significant an interest in the corporation. Reporting requirements of the Securities and Exchange Commission and the Department of Defense are often triggered by an ownership interest of ten percent or even less, and the FAA believes that this constitutes a reasonable threshold.

Through the comment process, Kistler Aerospace Corporation and Lockheed Martin Corporation requested that the FAA not require an applicant to identify its foreign ownership interests. *Kistler at* 10; *Lockheed Martin* at 7. Kistler recommended that the FAA require, instead, a statement from the applicant that it is in compliance with all federal requirements governing foreign ownership in certain sensitive industries under 50 U.S.C. §§ 1701 et seq. and 31 CFR Part 800. Kistler notes that the Treasury Department examines and passes upon foreign involvement in sensitive industries such as the launch industry. Thus, according to Kistler, the FAA's information requirements concerning foreign ownership would be duplicative. Lockheed Martin maintains that the FAA offers an insufficient explanation regarding the purposes of obtaining the information.

The statutory and regulatory provisions upon which Kistler relies for its argument do address certain elements of foreign ownership, but address a more narrow area of concern than identified in the Act. The provisions of 50 U.S.C. ch. 35—International Emergency Economic Powers, §§ 1701–1706, apply to the President's exercise of authority in a national emergency. The FAA, on the other hand, may apply the information on a more routine basis, and for its own purposes. For example, the FAA has occasion, as with Sea Launch, to determine whether a U.S. citizen controls a license applicant for purposes of ascertaining whether the launch operator requires a license. Nor do the regulations Kistler cites address all forms of foreign ownership. On its face, part 800 only applies to mergers, acquisitions and takeovers by foreign persons. 31 CFR Part 800. There are transactions that are not acquisitions under part 800. *See* 31 CFR § 800.302 and examples provided. In light of the fact that not all foreign ownership receives scrutiny under part 800, the FAA finds that its information requirements concerning foreign ownership will not duplicate those of the Treasury. The FAA also takes note of the fact that part 800 does not alter or affect any other reviews. Accordingly, because the FAA itself may require the information regarding foreign ownership in order to determine whether a U.S. citizen exercises control over an applicant, because the Departments of State and Defense have interests in foreign ownership issues, and because the Treasury regulations do not address all forms of foreign ownership, the FAA adopts paragraph 415.25(c)(2) as proposed.

Section 415.25(d)(2) requires an applicant to identify proposed vehicle flight profiles. Space Access maintains

that compliance may be difficult when planning large numbers of launches. To date, it has been the experience of the FAA that compliance is possible. An applicant may satisfy this requirement by providing a range of proposed flight azimuths, trajectories, ground tracks, and instantaneous impact points. Launch frequency should not affect an accurately identified range of flight profiles. In any event, this same information is also used by the FAA in its safety review and is critical to assessing public risk.

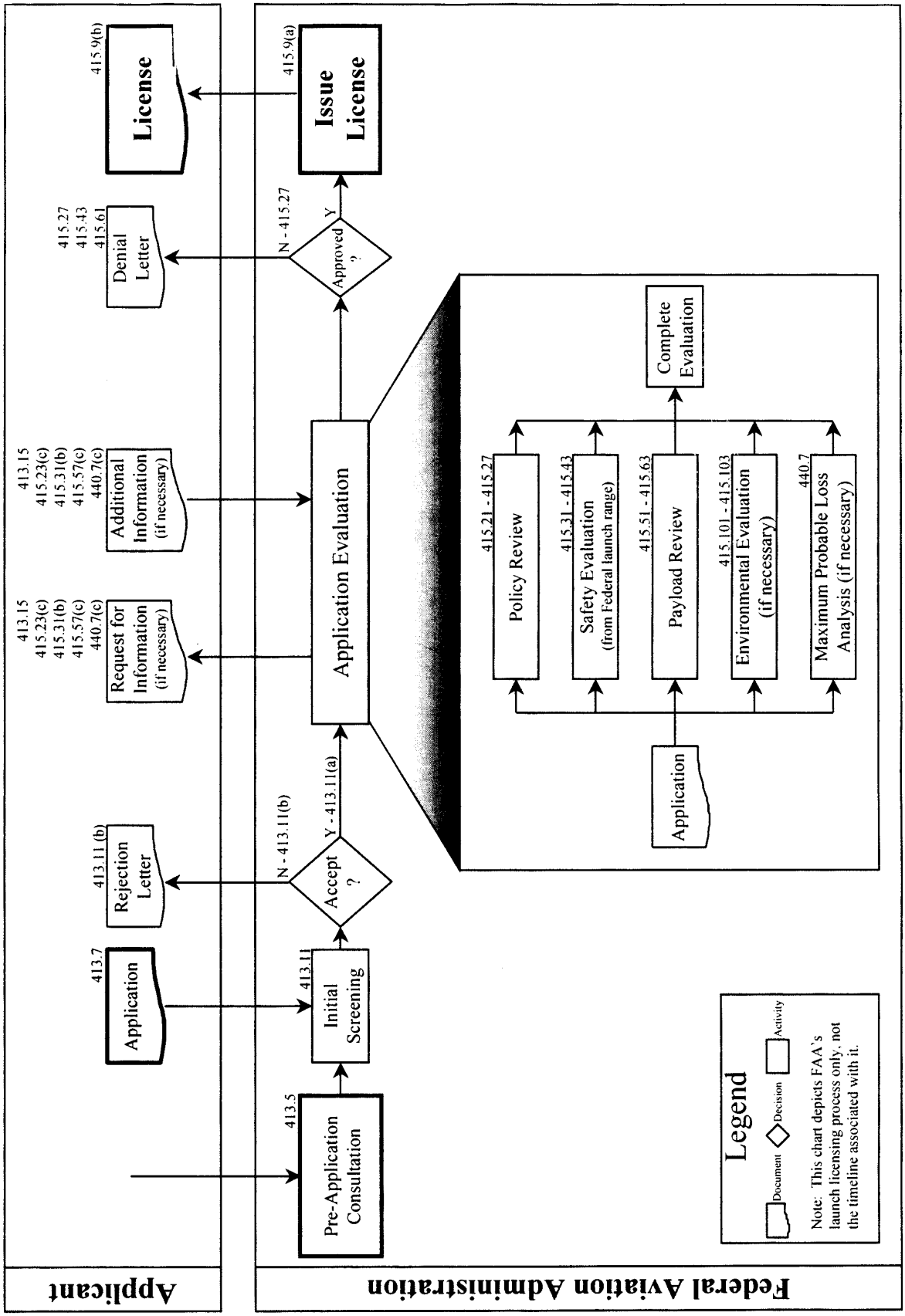
Section 415.25(d)(3) requires information regarding the sequence of major launch events during flight. In this regard, the FAA expects to be informed of events such as approximate engine burn times of all stages, stage separation events, pitch and yaw maneuvers and engine cutoff. An applicant may provide this information through a text explanation or through diagrams and charts.

Section 415.25(d)(4) requests a description of the range of nominal impact areas for all spent motors and other discarded mission hardware. The area identified for each impacting component shall include that area within three standard deviations of the nominal impact point, a calculation otherwise known as a 3-sigma footprint.

Section 415.27 contains procedures employed by the FAA when it denies an applicant a policy approval and describes the recourse available to that applicant. If an applicant fails to obtain a policy approval, the applicant may attempt to correct the deficiencies which resulted in the denial and request reconsideration of the denial, or, upon denial of a license, it may request a hearing. The final version of this provision differs slightly from what the NPRM proposed. The NPRM stated that an applicant who was denied a policy approval could reapply. In order to avoid confusion, the provision now permits an applicant to request the FAA's reconsideration of its denial. This makes clear that the FAA need only reconsider an issue once rather than an unlimited number of times. The particular issue in controversy may serve as one of the reasons for requesting a hearing before an administrative law judge after denial of a license.

BILLING CODE 4910–13–P

Figure 1. FAA Launch License Process



BILLING CODE 4910–13–C

Subpart C addresses the FAA's safety evaluation process for license applications for launch from a federal launch range. This subpart is new and replaces the former subpart B—Safety Review, 14 CFR 415.11–415.17. Because of the history and safety record of the federal launch ranges, and because the FAA's baseline assessments provide a written record of the federal launch range's experience relevant to commercial space transportation, the FAA accepts that a federal launch range will perform its safety role. Accordingly, the FAA's information requirements are directed more toward an applicant's own safety capabilities and its integration with a federal launch range's safety organization. The FAA requires information regarding an applicant's safety organization, vehicle design and operational safety practices. This subpart includes standards regarding acceptable flight risk and requires an applicant to submit procedures and plans that demonstrate that it will satisfy certain other safety requirements if it obtains a license.

The FAA recognizes that federal launch ranges provide a number of safety services for launch operators, and that these sites have an historically good record of safety. Section 415.31 explains that the FAA will issue a license to an applicant proposing to launch from a federal launch range if the applicant satisfies the requirements of subpart C and has contracted with the federal launch range for the range to provide launch services and property, as long as the safety related launch services and proposed use of property are within the experience of the federal launch range. All other safety services and property associated with an applicant's proposal are evaluated on an individual, case by case basis.

The FAA has assessed the four federal launch ranges which provide launch services and facilities. The federal ranges assessed include Cape Canaveral Air Station, Vandenberg Air Force Base, Wallops Flight Facility and White Sands Missile Range. The FAA does not duplicate federal launch range analyses or routinely review those analyses during the launch safety review conducted by the FAA. Instead, the FAA relies on its knowledge of the range processes as documented in the FAA's baseline assessments. The FAA's assessments provide a basis for the FAA's reliance on the adequacy of the services provided by each of the federal launch ranges. Some safety issues, however, may not be adequately addressed by a federal launch range. The failure of federal launch range safety systems or procedures may, for example, affect the FAA's ability to rely on a federal launch range. The FAA may ascertain this during the course of a pre-application consultation or once an applicant submits its application, or through its communications regarding launch activities with the federal ranges. The FAA may then require the applicant to demonstrate safety with respect to those specific areas of concern on an individual or case by case basis. In addition to requiring a showing of safety from the applicant, the FAA will also work with the federal launch range to address the issue, and will update the FAA's baseline assessment as appropriate.

The FAA also makes maximum use of the information an applicant must provide a federal launch range. The applicant, to save paperwork, may submit to the FAA either entire, or appropriate sections of, documents it prepares and submits to a federal launch range that are relevant to the applicant's launch application. It has been the FAA's experience that because information requested by federal launch ranges provides greater detail than the FAA requires, the FAA's requirements may be satisfied by this material.

Section 415.33 requires an applicant to document its safety organization. An applicant must possess a functioning safety organization because an applicant cannot ensure safety without someone designated as responsible for safety issues. The FAA will evaluate whether the structure, lines of communication, and approval authority an applicant establishes will enable the applicant to identify and address safety issues and to ensure compliance with the requirements of range safety and the FAA's regulations. How a federal launch range's safety services are integrated with the licensee is also relevant. The FAA expects that for launches from federal launch ranges an applicant will structure its safety organization to ensure compliance with federal launch range requirements, such as, for example, Eastern and Western Range Regulation 127–1 for Air Force launch ranges. The FAA believes that charts are the most efficient way to depict much of the required information, and encourages applicants to include one or more, as appropriate, organizational charts that will delineate the lines of communication and the internal decision making process. The lines of communication must depict the lines of communication within the applicant's organizational structure, and between the applicant and any federal launch range providing launch services. In providing this information, the applicant should include those services of the federal launch range upon which the applicant proposes to rely, and those of any other organization providing flight safety services. The applicant's description must include interfaces with the federal launch range and should explain how the safety policies and procedures of all segments of the safety organization identified above will be implemented.

Section 415.33(b) requires an applicant to have a safety official possessing authority to examine launch safety operations and to monitor independently personnel compliance with safety policies and procedures. In order to keep safety concerns separate from mission goals, the person responsible for safety should have the ability to perform independently of those parts of the applicant's organization responsible for mission assurance, and should also have the authority to report directly to the licensee's personnel in charge of licensed launches. The safety official should be identified by name, title or position, and by qualifications.

Orbital suggests that a safety official should not be required to report to someone who has a vested interest in the outcome of the launch. *Orbital* at 7. According to Orbital, such a person might be in a position to exert undue influence or pressure on the safety official. *Id.* When it proposed this requirement, the FAA intended just the opposite. The FAA intended that the safety official have authority to report directly to the person in charge of licensed launches in order to ensure that safety decisions were made at appropriately elevated levels, rather than becoming low priority issues buried in the lower levels of an organization. As noted in the NPRM, the FAA intends the reporting to ensure that the person responsible for the licensed launch ensure that all of a safety official's concerns are addressed prior to launch. Accordingly, because both the safety official and the person responsible for licensed launch possess safety obligations, no conflict of interest should exist. The FAA also believes that this decision reflects a reality within industry, namely, that the person in charge of mission success may well make final decisions regarding safety. The regulations impose safety obligations on that individual as well.

Space Access also questioned this provision, querying the value of an applicant identifying the qualifications of a safety official's position. Space Access believes that this could result in an applicant identifying the qualifications of the position even though the individual performing the

job is not qualified. In order to clarify the FAA's intent, section 415.33(b) now states that an applicant shall identify the safety official by name, title, and qualifications. An applicant must show that there is a relationship between the individual's experience and responsibilities. The FAA agrees with Space Access that a safety official's experience be provided. The FAA will not at this time impose requirements governing the particulars of a person's education and years of experience. Instead, it will rely on the performance standard articulated in 415.33(b).

Although risk is inherent in the launch of a launch vehicle, section 415.35, which is promulgated through this rulemaking, establishes limits on how much risk the FAA will allow for a licensed launch. The FAA has clarified this section from that originally proposed in the NPRM to better describe the FAA's expected casualty (E_c) measure of risk by deleting ''the probability of occurrence'' and including mention of suborbital launch vehicles. The FAA is also classifying the scope of the hazards addressed. An E_c measure reflects risk from debris, not from toxic releases or blast overpressure, which the federal launch ranges handle through other means. Additionally, the proposed term ''collective risk'' in the second sentence is now deleted to state more specifically that an applicant's proposed launch shall not exceed an expected average number of 30 casualties in one million launches. This phrasing still describes collective risk, but with more precision. With these clarifying editorial changes, the FAA now adopts its measure of acceptable risk of $E_c \leq 30 \times 10^{-6}$ per launch.

The FAA received comments regarding its proposed risk threshold. Boeing supported the FAA's proposal. *Boeing* at 1. Space Access argued that the E_c was insufficiently strict, and should be compared to involuntary rather than voluntary risk. Space Access recommended an individual risk threshold of $E_c \leq 1 \times 10^{-7}$. *Space Access* at 11. The FAA anticipates that a better explanation of what E_c measures and the differences between individual and collective risk will respond to Space Access' arguments against an E_c of 30×10^{-6}. In short, when expressed in terms of individual risk, the FAA's collective risk measure satisfies the concerns voiced by Space Access. Space Access also maintains that a comparison to voluntary risk is inappropriate and that involuntary risk provides the better measure. The FAA, however, like the Air Force, defines background risk as the risk voluntarily accepted in the course of day to day activities, and finds that voluntary risk provides an acceptable basis of comparison for determining acceptable risk. Moreover, even when compared to involuntary risk, as Space Access recommends, if the FAA's collective risk measure is described in terms of its individual risk counterpart, the measure compares favorably.

Section 415.35(a) requires that acceptable flight risk through orbital insertion for an orbital launch vehicle, and through impact for a suborbital launch vehicle, be measured in terms of collective risk. Pursuant to section 415.35(a), the collective risk associated with debris from an applicant's proposed launch, measured by casualty expectancy, shall not exceed 0.00003 (30×10^{-6}) casualties per launch. E_c represents the FAA's measure of the collective risk to the population exposed to the launch of a launch vehicle. The measure represents the expected average number of casualties for a specific launch mission. In other words, if there were thousands of the same mission conducted and all the casualties were added up and the sum divided by the number of missions, the answer and the mission's expected casualty should statistically be the same. This E_c value defines acceptable collective risk.[11]

Collective risk is estimated prior to launch, and constitutes the sum total launch related risk to that part of the public exposed to the hazards of a launch. The public includes everyone except launch personnel. Government personnel who are not essential to a launch are defined as the public for purposes of measuring acceptable risk.

The FAA's standard derives from launch risk guidance employed by the Air Force at its Eastern Range, Cape Canaveral Air Station, and its Western Range, Vandenberg Air Force Base, to define acceptable risk. The FAA adopts this standard because the FAA believes that commercial launches should not expose the public to risk greater than normal background risk, which the FAA defined in its NPRM as those risks voluntarily accepted in the course of normal day-to-day activities. The FAA is using the Air Force standard because it reflects the standard already in place for the majority of commercial U.S. launches, and for the majority of government launches of vehicles of a comparable size. No casualties arising out of a government or commercial launch have occurred to the public under this standard. It is the FAA's understanding that although the Air Force published this figure in 1995, it did so because it found that this figure best represented historical launch risk levels.

The FAA is aware that the Air Force implements this standard as ''acceptable launch risk without high management (Range Commander) review.'' ''Eastern and Western Range 127–1 Range Safety Requirements,'' Sec. 1.4.1, 1–12. This means that based on national need and the approval of a range or wing commander the Air Force may allow a launch with a predicted expected casualty risk of greater than 30×10^{-6}. *Id.* As mentioned in the NPRM, the FAA recognizes that many commercial launches carry government payloads, and that there may be a national need to launch a critical national payload with a predicted launch risk of greater than 30×10^{-6}. An applicant proposing to launch a government payload, where the launch would not meet the FAA's risk requirement, would have to request a waiver from the FAA and show that national need warranted waiver of this standard. The FAA would work with any government payload owner or operator to resolve such an issue. The FAA establishes this standard, however, for all commercial launches, so that the

[11] The E_c value adopted originated with the Air Force's stated measure of acceptable risk. ''Eastern and Western Range 127–1 Range Safety Requirements,'' Sec. 1.4(d), 1–12 (Mar. 31, 1995). Space Access brought a number of risk levels to the FAA's attention, requesting that the FAA reconcile the apparent discrepancies between those risk levels, including the agency's own past descriptions of risk levels, and the FAA's proposed risk measure. A rulemaking is the appropriate mechanism for the FAA to adopt new standards. Thus, although the FAA now adopts a standard different than those its earlier reviews described, this rulemaking provides the forum for doing so. The conflicts Space Access identifies stem, in relevant part, from the fact that the risk figures Space Access cites pre-date the Eastern and Western Ranges' publication of an acceptable risk threshold of $E_c \leq 30 \times 10^{-6}$. For example, although it is true that DOT's ''Hazard Analysis of Commercial Space Transportation'' (1988) (''DOT Hazard Analysis'') states that the Department of Defense (DOD) ranges do not have published standards for acceptable levels of public risk, DOD's Eastern and Western Ranges have since published the risk criteria on which the FAA now bases its own measure. Likewise, ''Financial Responsibility for Reentry Vehicle Operations,'' DOT, 27 (May 1995) describes general background risk as 1×10^{-6} per year. Prior to 1990, a collective risk of $E_c \leq 1 \times 10^{-6}$ was thought to be the typical safety level at the DOD ranges. However, studies using the most up to date models for predicting risk, undertaken to support the effort by the Eastern and Western Ranges to adopt a common standard showed that this was not always the case. The Air Force eventually published an $E_c \leq 30 \times 10^{-6}$ in 1995 instead. Again, the ''Commercial Launch Baseline Assessment for US Air Force Western Space and Missile Center'' DOT, 79, Sec. D.7.e (Jul. 1989) states that E_c should lie between 1.9×10^{-7} and 4.6×10^{-7}. The referenced passage was a relatively simple calculation of risk in the launch area for a representative launch, and provides an example of the risks rather than a worst case limit. This estimate today proves low with the availability of more accurate data.

general public will not be exposed to a higher than normal risk from a commercial activity.

The FAA also recognizes that the federal launch ranges may perform separate E_c analyses for three different hazard categories, including debris, toxic releases and blast overpressure. When the FAA relies on a federal launch range's E_c analysis to determine whether the FAA E_c requirement is met, the FAA is interested only in the debris analysis performed by a range, and this provision makes that clear. For toxic releases and blast overpressure, the federal launch ranges implement specific safety requirements designed to keep toxic releases and the effects of blast from reaching the public. For example, if more than a given number of parts per million of a toxic release would reach people, a launch will be delayed until conditions improve. Likewise, if atmospheric effects threaten to carry overpressure impact to persons outside the federal launch site, a launch will be delayed. Because these measures achieve safety, the FAA will rely on them rather than implementing an E_c analysis requirement for toxic releases and blast overpressure.

Space Access raised the question of whether an E_c of 30×10^{-6} meant that if an accident occurred and 100,000 people were exposed then 3 deaths would occur. *Space Access* at 8. The FAA wishes to take advantage of this opportunity to clarify the concepts involved. E_c is the expected average number of casualties per launch of a launch vehicle. The consequence measured is casualties, which includes serious injury as well as deaths, and the measure is per event, namely, launch. Space Access based its question on the assumption that 30×10^{-6} is ''3 per 100,000'' persons. That E_c is a measure of casualties rather than deaths aside, expected casualty is measured for each event, which, in this case is a single launch. Although Space Access is, of course, correct that an E_c of 30×10^{-6} is equivalent to 3 per 100,000, the 100,000 refers not to exposed persons, but to the number of launches that would have to be conducted before one would expect statistically that total number of casualties. One would have to launch 100,000 times to statistically reach 3 casualties.

Space Access sought clarification on the differences between individual and collective risk. In contrast to the more familiar measure of risk, namely, individual risk, which describes the probability of serious injury or death to a single person, the launch industry's common measure of risk is collective risk. Collective risk constitutes the sum total launch related risk, that is, the probability of injury or death to that part of the public exposed to a launch. Collective risk is analogous to an estimate of the average number of people hit by lightning each year, while individual annual risk would be an individual's likelihood of being hit by lightning in any given year. Collective risk may be expressed in terms of individual risk if certain factors associated with any given launch are taken into account. Also, individual risk may be—and will be, in most instances—less than collective risk, depending on the size of the population exposed. For example, a collective risk of E_c of 30×10^{-6} for a defined population of one hundred thousand people exposed to a particular launch results (assuming the risk is spread equally throughout the defined population) in a probability of injury or death to any one individual exposed of 3×10^{-10} (three per ten billion).

In its comments, Space Access argued for a stricter standard on the basis of what it understood to be other measures of risk. Space Access analyzed the FAA's proposed measure in terms of two categories: background risk, which may be further categorized as a combination of voluntary and involuntary risk, and other launch risk thresholds. Contrary to the contentions of Space Access, the FAA finds that the comparison to voluntary risks is appropriate. Even, however, when compared to involuntary risk, if the risks of launch are expressed in terms of individual risk, launch risk usually compares favorably. In fact, it is possible to have an unacceptably high expected casualty value while still having an extremely low individual risk level.

Space Access inquired whether the proposed standard appropriately reflects risk levels voluntarily accepted by the public in normal daily activity. Voluntary risk provides an appropriate comparison. The FAA defines background risk in the context of its statutory mandate to regulate and facilitate the commercial launch industry. Congress has chosen to accept the risk of launch in order to reap the benefits attendant to the activity. Recognizing that this country has decided to accept these risks, the FAA believes, as the federal launch ranges do (*see* ''Eastern and Western Range 127–1 Range Safety Requirements'', Sec. 1.4(d), 1–12), that it is appropriate to compare launch risks to other measures of voluntary risk. A recent study proves helpful for making that comparison. *See Acceptable Risk Criteria for Launches from National Ranges: Rationale*, Rep. No. 97/350–2.1–01, ACTA, for the Department of the Air Force, 30th and 45th Space Wings (Sept. 1997)[12]. ACTA estimated the average annual accidental fatality probability for any individual, which is defined as all accidental causes of death. ACTA estimated the fatality probability by adding the estimated annual individual fatality probability from accidents outside the home and the reported annual individual fatality probability from accidents in the home. This excludes risk of disease. ACTA estimated a total risk of 2×10^{-4}. *Id.* at 18. The FAA's measure of acceptable risk for casualties may be as much as four orders of magnitude lower than this accident death risk. The comparison may only be made, of course, by translating the FAA's collective risk measure into individual risk and by employing the same time scale for both. If the comparison is made on an annual basis, and the example of an exposed population of 100,000 persons continues to be employed, then individual risk for a launch is, as mentioned earlier, 3×10^{-10}. Assuming 100 launches per year, then the individual annual risk results in a figure of 3×10^{-8}, which is four orders of magnitude lower than the risks, both voluntary and involuntary, of day to day activity.

Space Access also makes the point that the FAA would have to assign a maximum number of launches per launch site if the agency intends acceptable risk to remain below background risk. In the NPRM, the FAA acknowledged that its standard is based on present launch rates, and it still finds that this threshold is appropriate for the scope and frequency of launch operations planned over the next several years. Even if launch rates increase by an order of magnitude, individual annual risk will still compare favorably with other voluntary and involuntary risks. An exponential rise in launch rates may require a reassessment, although the FAA does not foresee an exponential increase in launch rates in the near term.

Space Access also suggests that other launch risk standards provide the proper measure of acceptable risk. Space Access notes that the 1988 DOT Hazard Analysis states that ''acceptable risk criteria'' for NASA's Wallops Flight Facility (WFF) is $E_c \leq 1 \times 10^{-7}$. *Space Access* at 10. As noted in its NPRM the FAA recognizes that WFF does not use an expected casualty standard of $E_c \leq 30$

[12] ACTA prepared this study in support of Range Commander's Council Standard 321–97, which articulates federal launch range policies and criteria for protection of personnel, aircraft, ships, and spacecraft.

$\times 10^{-6}$. Although at the time of the publication of DOT's Hazard Analysis WFF may have reported $E_c \leq 1 \times 10^{-7}$, since that time, NASA has stated that WFF uses an E_c of less than or equal to 1×10^{-6}. ''Range Safety Manual for Goddard Space Flight Center (GSFC)/ Wallops Flight Facility,'' 24 (Jun. 23, 1993); Beyma, ''Flight Safety Range Safety Officer Training Manual, NASA/ Wallops Flight Facility,'' 2 (Sept. 1993). The FAA must choose one standard. The level of safety at the Eastern and Western Ranges, represented by the collective risk standard of $E_c \leq 30 \times 10^{-6}$ has resulted in no harm to the public. The vast majority of U.S. commercial launches take place from CCAS and VAFB. The FAA therefore finds that this accepted standard is appropriate for all licensed launches.

Space Access also maintains that in order to adopt an E_c standard of $E_c \leq 30 \times 10^{-6}$, the FAA would have to obtain NASA's acceptance. This is not in fact the case. NASA and the FAA have different roles. Commercial launches are regulated by the FAA, not NASA. As the operator of a launch site, NASA is free to require a different measure of acceptable risk than that required by the FAA. Any FAA licensed commercial launch, regardless of where it takes place, must, however, at least meet FAA standards, even were a particular federal launch range to impose less stringent requirements. In this case, the more stringent NASA standard with which a user of WFF would have to comply does not conflict with the FAA standard.

Paragraph 415.35(b), which the NPRM proposed as paragraph 415.35(c), requires an applicant to submit an analysis that identifies the hazards and assesses the risks for flight under nominal and non-nominal conditions.[13] This requirement has been modified to clarify that the risk assessment serves the purpose of demonstrating compliance with paragraphs 415.35(a). A federal launch range will sometimes perform a quantitative analysis for flight until orbital insertion, or for a suborbital mission until impact. A range may determine that an analysis of previously approved missions applies or may serve as a basis for a comparative analysis. If an applicant's previously submitted application contains a risk assessment, the applicant need not submit additional analyses for similar launches. In such cases, a comparative analysis may be supplied.

As an alternative to relying on federal launch range procedures, an applicant may perform its own quantitative risk analysis. Pursuant to section 415.35(b), although an applicant may submit a federal launch range risk analysis, the applicant bears the burden of demonstrating that predicted risk does not exceed an expected casualty of $30 \times 10-6$. To assist applicants, the FAA has documented the range safety process for each of the federal launch ranges. A launch hazard event tree, such as the one described in the DOT Hazard Analysis of Commercial Space Transportation, page 10–29, provides an acceptable method for identifying hazards and assessing risks.

Section 415.35(c), which was proposed in the NPRM as section 415.37(a), ensures that an applicant identify the design of its launch vehicle. In its application, an applicant shall identify and describe its launch vehicle's design, including its structure and the vehicle's hazardous and safety-critical systems, and provide drawings and schematics for each system identified. Because federal launch ranges require an applicant to provide a detailed description of the applicant's launch vehicle and its systems, including drawings and schematics, an applicant may satisfy the requirements of this paragraph by providing the FAA with a copy of all or appropriate portions of the documentation provided to a federal launch range. The FAA will not use the data to duplicate the federal launch range's design approval process, but to document the characteristics of the launch vehicle being licensed and upon which the hazard identification and risk assessment are based.

Section 415.35(d) requires that an applicant's launch vehicle be operated in a manner that meets the criteria of paragraph 415.35(a). To that end, an applicant must describe the launch operations and procedures that the applicant will employ to mitigate risks for flight. The applicant should eliminate or control by design and operations all identified hazards to the levels specified in paragraph (a). Typical hazard controls for flight until orbital insertion used at current federal launch ranges include flight termination systems, and, for suborbital launches, azimuth and elevation adjustments based on a wind weighting analysis. Other hazard controls may involve modifying a vehicle trajectory to avoid high risk areas, and delaying launch until more favorable conditions exist. An applicant for a license to launch from a federal launch range may rely on the methods used by federal launch ranges to identify hazard controls and to ensure that the hazard controls will be effective.

Section 415.37(a), which was originally proposed as section 415.37(c), implements the FAA's current flight readiness guidelines. As noted in the NPRM, the requirements arise out of recommendations from a National Transportation Safety Board (NTSB) investigation[14] of an anomaly that occurred during a commercial launch from a federal launch range. Requirements intended to ensure the readiness of a launch team include designation of an individual responsible for flight readiness, launch readiness reviews, rules and abort procedures and, countdown checklists, dress rehearsals procedures, and procedures for crew rest.

The FAA recognizes that there are many reviews conducted of a launch system from its initial design up to flight. However, in section 415.37(a)(1), the FAA places special emphasis on a flight readiness review, or its equivalent. A review is typically conducted not more than one or two days prior to scheduled flight. In most cases a flight readiness review is standard practice at federal launch ranges, but the FAA considers the review, and the topics required in this section, to be so important that the applicant must, in its application, commit to a meeting and identify the topics to be addressed. This review must ensure that all system and personnel readiness problems are identified and are associated with a plan to resolve them, that all systems needed for flight have been checked out and are ready, and that each participant is cognizant of his or her role on the day of flight. If this review reveals unresolved issues, the licensee will be able to assess its ability to resolve those issues before the intended launch time or to delay the flight, as appropriate.

Section 415.37(a)(2) requires an applicant to possess procedures that ensure mission constraints, rules and abort procedures are contained in a single document approved by licensee flight safety and federal launch range personnel.

Section 415.37(a)(3) requires an applicant to employ procedures that ensure that all launch countdown checklists are current and consistent. Past inconsistencies in critical countdown checklists and procedures have raised serious safety concerns. The FAA recognizes that it may be

[13] This section is renumbered in order to accommodate the move of the NPRM's proposed paragraph 415.35(b) into section 415.39, which addresses safety at the end of launch.

[14] ''Special Investigation Report, Commercial Space Launch Incident, Launch Procedure Anomaly, Orbital Sciences Corporation Pegasus/ SCD–1 80 Nautical Miles East of Cape Canaveral, Florida,'' NTSB (Feb. 9, 1993).

impractical for all launch participants to have identical checklists due to differences in the roles of launch participants. The applicant should, however, have some process, such as a master countdown manual, to ensure the currency and consistency of all participants' checklists during countdown to flight. This will ensure that confusion and uncertainties on launch day are minimized, that flight safety critical procedures are completed successfully, and that those individuals with launch decision authority know what is going on and are able to make sound decisions.

Section 415.37(a)(4) requires an applicant to have procedures for the conduct of dress rehearsals. As demonstrated in the past, poor performance at a dress rehearsal may indicate a lack of readiness of individuals or systems responsible for safety. An applicant's procedures should include criteria for determining when dress rehearsals are not necessary. A number of launch companies, for example, have been conducting routine launches of the same vehicle for many years. The FAA recognizes that although dress rehearsals may not be necessary in every case, they may be critical to those launch companies that are new to a launch site, to those that have significant changes in personnel, or to those launching a new launch vehicle.

Even those launch operators that routinely conduct launches typically have certain criteria and procedures in place to verify that a launch team is ready for launch, especially if a considerable period of time has elapsed since the last launch took place. In this regard, Space Access recommends that the FAA impose a currency requirement of 45 days. *Space Access* at 11. The FAA will take the recommendation into account in future rulemakings, but for the time being declines to impose a currency requirement of 45 days. The need for dress rehearsals is driven by issues specific to particular vehicles, including the number of personnel required to launch the vehicle, the complexity of their tasks, and the amount of communication required among team members to launch safely.

For those situations where dress rehearsals are necessary, the dress rehearsal should simulate both nominal and non-nominal conditions, induced not only by the launch vehicle or payload, but by the range safety system as well. Anomalies introduced during the rehearsal should exercise and prove the abilities of all launch participants, including federal launch range personnel, to recognize an event that compels a launch hold, delay or flight termination decision. In the NPRM, the FAA noted its interest in views as to any need for future standards relating to rehearsals and the criteria for deciding, based on performance during the rehearsal, that it is acceptable to proceed with the launch. In response, Space Access suggested that no discrepancies be permitted for a nominal profile, and only minor discrepancies be permitted for failure profiles, if the discrepancies involve non-critical actions. *Space Access* at 11. The FAA agrees, and will interpret section 415.37(a)(4)(i) according to Space Access' recommendation.

Section 415.37(a)(5) responds to another NTSB recommendation, and requires that an applicant ensure that its flight safety personnel adhere to federal launch range crew rest rules. Experience has shown that launch crew rest criteria for all those involved in supporting launch operations are extremely important and can have a significant impact on public health and safety. Federal launch ranges typically have such requirements. Based on current knowledge and the demonstrated safety history of the federal ranges, the FAA would consider adequate adherence to these requirements. Other rest criteria proposed by an applicant may be acceptable if the applicant requests a waiver of the FAA's rules and demonstrates that the criteria would be adequate.

Section 415.37(b) and (c), originally proposed as a separate section, 415.39, require an applicant to submit a communications plan that ensures that licensee and federal launch range personnel receive safety-critical information during countdown and flight. The NTSB, after its investigation of a launch anomaly, concluded that effective communications are critical to the conduct of a safe flight. Everyone involved in a launch needs to know not only what channel has been assigned for particular communications, but also the proper protocol for communicating on that channel. The FAA recognizes that a number of different individuals typically have input and decision authority with respect to the readiness of various launch and safety systems. Past experience has shown that serious mishaps could result if these relationships are not clearly defined and understood by all parties. These relationships must therefore be identified by the applicant. Identifying persons with authority to make ''hold'' and ''go/no-go'' decisions is critical to ensuring that on launch day, everyone knows who can call a ''hold'' and, more importantly, who has the authority to authorize the resumption of the countdown or a recycle procedure, and under what specific conditions. This will help eliminate confusion and cross-talk that could cause a miscommunication leading to an unsafe condition. In addition, the FAA requires that everyone who has a decision-making role, or who, by action or inaction can either prevent or allow a launch to take place, be on the same predetermined channel during countdown and flight.

Under section 415.39, which was included in the NPRM as paragraph 415.35(b), an applicant must demonstrate that for any proposed launch that for all launch vehicle stages or components that reach earth orbit that there will be no unintended physical contact of the vehicle or its components with its payload after payload separation. The applicant's proposal must also ensure that debris generation will not result from the conversion of energy sources into energy that fragments the vehicle or its components. In addition, although not specifically proposed in the NPRM, the FAA now adds paragraph (c) to specify required measures that prevent the conversion of energy sources into energy that fragments a vehicle or its components, unless other measures are approved in the course of the licensing process. The FAA discussed the new measures in the NPRM.

Those involved in commercial, defense and scientific uses of space have been voicing a growing space safety concern due to the increasing number of objects being placed in orbit, which increases the potential for collisions between objects in space. Collisions in turn create additional objects, increasing the potential for harm or damage. The operation of launch vehicles in space affects and is affected by hazards associated with space debris. Accordingly, the requirements of this section serve to mitigate hazards associated with space debris. Federal launch ranges perform a collision avoidance analysis, or conjunction on launch assessment, commonly referred to as a COLA, prior to launch only to ensure that manned or potentially manned spacecraft will not be affected through orbital insertion. The FAA has elected to adopt only selected debris mitigation practices that are of almost universal applicability. It has not, for example, opted for requiring collision avoidance measures or post-mission disposal, or for specifying a minimum lifetime on orbit.

Orbital noted in its comments that preventing unplanned contact is a primary goal of each launch because it ''represents sound technical,

operational, safety and financial business practice,'' rendering a regulation prohibiting such contact unnecessary. *Orbital at 10.* Orbital recommends that the prohibition on unintended contact be deleted or modified so that rather than ensuring there be no contact, such contact be prevented ''to the fullest extent feasible.'' *Id.* For the reasons stated in the NPRM the FAA now implements this requirement. In light of the fact that preventing unplanned contact is already a primary goal of a launch operator, the FAA does not consider the requirement unduly burdensome. At the time of the NPRM, the FAA intended that the original requirement constitute a performance standard that could be implemented in any manner that achieved the goal, thus avoiding an overly intrusive degree of regulation.

Orbital's recommendation that a licensee ensure against unplanned contact ''to the fullest extent feasible'' cannot be adopted because it only adds ambiguity to what is required. Ensuring against an event is a clear requirement. It means that the event must not occur. Ensuring against that event to the fullest extent feasible raises questions regarding whether something need not be done if it is technically not feasible, too expensive or for some other reason. The FAA does not discern a reason for making such distinctions that outweigh the safety benefits of requiring a licensee to prevent unplanned contact.

Orbital also maintains that it is impossible to ensure that debris generation will not result from the conversion of energy sources into energy that fragments the vehicle as required by paragraph (b). Although Orbital is correct that it is impossible to ensure with utter certainty that energy will not fragment the vehicle, or, indeed that any given event could be prevented with utter certainty, there are practices that have been shown to prevent this occurrence. As noted in the NPRM, the FAA is aware of a number of standard industry practices designed to prevent or reduce this on-orbit risk. These practices include depleting residual fuels and leaving fuel lines valves open, venting pressurized systems, and leaving batteries in a permanent discharge state. These practices are routine. The NPRM intended to require that these practices be employed for all commercial launches, rather than ignored for reasons of cost or otherwise. The FAA recently uncovered ambiguity in the proposed requirements. Therefore, the FAA now clarifies the requirement by specifying that a licensee must remove stored energy by depleting residual fuels and leaving fuel line valves open, venting pressurized systems, leaving batteries in a permanent discharge state, and removing any remaining sources of stored energy, or other equivalent procedures. The practices enumerated in paragraph (c) should satisfy the requirement in paragraph (b).

A number of standard industry practices reduce potential on-orbit risks arising out of flight following orbital insertion. A launch operator may maneuver its launch vehicle orbital stage after payload separation to minimize the likelihood that the orbital stage will recontact the payload. This avoids the consequences of either a malfunctioning payload or orbital debris. In order to reduce the possibility of future explosions that could create orbital debris, a launch operator must render liquid fueled orbital stages as inert as possible by expelling all propellants and pressurants and protecting batteries from spontaneous explosion. A launch operator may keep stage-to-stage separation devices and other potential debris sources captive to a stage with lanyards or other means. Also, a launch operator may choose launch times to geosynchronous transfer orbit designed to align the final orbit of the orbital stage so as to lower the perigee of the stage more quickly than other orbits.

Section 415.41 requires an applicant to submit an accident investigation plan. The accident investigation plan must comply with the reporting requirements identified in section 415.41(b), and must contain procedures for responding to a launch accident, incident or other mishap. As noted in the discussion of the definition of ''mishap,'' the proposed rules have been modified to require notification of mishaps only above a threshold severity level.

Section 415.43 contains the procedures employed by the FAA when it denies an applicant a safety approval and describes the recourse available to that applicant. If an applicant fails to obtain a safety approval, the applicant may attempt to correct the deficiencies which resulted in the denial and request reconsideration of the denial, or, upon denial of a license, it may request a hearing. The final version of this provision differs slightly from what the NPRM proposed. The NPRM stated that an applicant who was denied a safety approval could reapply. In order to avoid confusion, the provision now permits an applicant to request the FAA's reconsideration of its denial. This makes clear that the FAA need only reconsider an issue once rather than an unlimited number of times.

Under subpart D, the FAA conducts a payload review and determination pursuant to 49 U.S.C. § 70104(c). The Act provides that the Secretary of Transportation may prevent the launch of a particular payload if the Secretary determines that the payload's launch would jeopardize the public health and safety, safety of property, or national security or foreign policy interests, or international obligations of the United States. Subpart D explains when a payload review and determination are required and the elements of that review. Addition of this subpart constitutes a change from the FAA's current practice because the payload review will no longer be performed as part of the policy review. This subpart allows either a launch license applicant or a payload owner or operator to apply for a payload determination separately from a launch license application, as was also provided under the former section 415.23 of a mission review. A launch license applicant's decision to seek a payload determination separately from a license application might be based on uncertainty with respect to payload issues and a desire to gain a payload determination before undertaking the additional effort required to prepare a complete launch license application.

Although a payload determination is required for a license, it is not necessarily a requirement imposed on a license applicant. An applicant need not itself apply for a payload determination if a determination has otherwise been issued to a payload owner or operator. In addition to the fact that many payloads are exempt from FAA consideration, an applicant may incorporate by reference a payload determination issued earlier to the applicant or to a payload owner or operator. Alternatively, an applicant may reference a separate application submitted by another launch license applicant for a payload determination and request that the FAA incorporate its earlier determination.

The FAA does not believe that this flexible approach affects the statutory requirement that the FAA complete its license application review within 180 days. Submission of a request for a payload determination does not constitute the filing of a complete application, and a license application is not complete without a request for a payload determination. The FAA stated in its NPRM that it was considering issuing conditional licenses on those occasions when a request for a payload determination had yet to be completed. This would mean that a license would be issued subject to or conditional upon

issuance of a payload determination. The FAA once issued a conditional license to an applicant who proposed to launch a reentry vehicle as its payload. The reentry vehicle was still under development, but the FAA issued a launch license conditioned upon eventual submission of all required payload information and a final determination by the FAA regarding the payload. The FAA has decided, however, that with these rules it will not adopt such a course. A license will be issued only for a complete application.

The FAA also addresses payload safety issues because payload safety is not otherwise part of the safety evaluation of a launch. Payload issues considered during the review include, but are not limited to, safety issues associated with the launch of the payload and its intended operation and design, the payload owner(s), and the payload function. For example, a past payload issue included the nature of the cargo. In that case the payload cargo consisted of cremains, which are human remains reduced to small pellets. A safety issue addressed was whether the pellets would be dispersed while in orbit.

Section 415.51 describes the scope of an FAA payload review, clarifying part of the former section 415.21. Pursuant to proposed section 415.53, the FAA will not review payloads owned and operated by the government of the United States or those that are subject to the regulation of the Federal Communications Commission or the Department of Commerce, National Oceanic and Atmospheric Administration.

As explained in the NPRM, new section 415.55 allows the FAA to make a determination regarding a proposed class of payloads, including, for example, communications, remote sensing or navigation satellites. When an applicant requests an operator license to conduct unspecified but similar launches over a period of five years, the applicant will not always be able to identify specifically each payload to be launched. The applicant must describe the class or classes of payloads proposed for launch under the license and general characteristics of those payloads. In these cases, the licensee must later provide additional descriptive information regarding the specific payload prior to flight as described in section 415.79(a). That section refers a licensee to the information requirements of section 415.59, which specify the information required for a payload review.

The FAA must take this opportunity to clarify an issue raised by the comments of Kistler Aerospace Corporation. Kistler expressed concern that the launch reporting requirement under section 415.79 amounted to an additional payload review by the FAA for each payload within the class encompassed by a launch operator license. *Kistler* at 5–6. In point of fact, the information submitted sixty days prior to launch would not trigger additional policy and safety reviews. It would merely identify the characteristics of what is being launched for compliance monitoring purposes. Kistler recommends that a licensee whose class of payload has been approved and is proposing to launch a payload within that approved class merely submit a copy of a launch manifest ''describing the payload, the payload owner, pertinent details about the launch, etc.'' *Kistler* at 6. By requiring the information described in section 415.59, the FAA intends just that.

Section 415.57 provides procedures an applicant must follow to obtain a payload determination. The FAA coordinates a payload review with other government agencies such as the Departments of Defense, State, and Commerce, the National Aeronautics and Space Administration and the Federal Communications Commission.

The information requested under section 415.59 for a payload review is required to identify and address possible safety and policy issues related to the payload, and to conduct any necessary interagency review. In most instances, the information submitted may be brief, but in cases which present potential unique safety concerns considerable detail may be necessary regarding the physical characteristics, functional description and operations of the payload.

Section 415.61(a), which reflects certain requirements of former section 415.21, explains that the FAA will issue a payload determination unless policy or safety considerations prevent launch of the payload. Section 415.61(b) contains the procedures employed to deny an applicant a payload determination and describes the recourse available to that applicant. If an applicant fails to obtain a payload determination, the applicant may attempt to correct the deficiencies which resulted in a denial and request reconsideration of the denial, or, upon denial of a license, it may request a hearing. The final version of this provision differs slightly from what the NPRM proposed. The NPRM stated that an applicant who was denied a payload determination could reapply. In order to avoid confusion, the provision now permits an applicant to request the FAA's reconsideration of its denial. This makes clear that the FAA need only reconsider an issue once rather than an unlimited number of times.

Section 415.63 addresses incorporation of a payload determination into subsequent license reviews. It also explains that any change in information provided to the FAA must be reported in accordance with applicable rules.

Subpart E addresses post-licensing requirements, including license terms and conditions. This subpart describes a licensee's public safety responsibilities under section 415.71.

Section 415.73 describes the circumstances that require a licensee to apply for a modification to its license. This section modifies and builds upon the former section 413.19. That provision required an applicant or a licensee to notify the FAA whenever the information that formed the basis for any approval, determination or license action was no longer substantially accurate and complete in all significant respects, or whenever there has been a substantial change as to any matter of decisional significance. The FAA has required licensees to report material changes in order for the FAA to determine their significance. In the NPRM, the FAA proposed requiring that it be notified of all changes regardless of materiality, but now adopts a materiality standard in response to comments. A launch licensee must ensure the continuing accuracy of representations contained in its application for the term of its license, and must conduct its licensed launches as it has represented that it will. This means that if any information a licensee provides pursuant to part 415 will no longer be accurate, a licensee must apply for a modification to its license in advance of instituting the proposed change. For example, if a licensee intends to alter its accident investigation plan, it must obtain authorization in advance through a license modification to do so. Orbital describes this requirement as overly broad and undefined. *Orbital* at 9. Orbital recommends that the FAA incorporate a materiality standard, so that an applicant or licensee would only notify the FAA of any significant changes. *Id.* The FAA agrees in part. It does not wish to be advised of any and all changes, only of those material to public health and safety or safety of property. The FAA wishes to be advised of any material changes so that it may determine whether to modify a license.

The FAA also wishes to draw attention to an editorial change from the provision as originally proposed. In its NPRM, the regulations required a licensee to ''amend'' its application even after its license was issued. Now, the same provisions require a license ''modification.'' This results in no substantive change. It does clarify, however, that an application is part of any ensuing license and that a licensee must obtain advance authorization from the FAA for any material changes.

The remainder of subpart E contains license terms and conditions applicable to all licensees. Section 415.75 requires a licensee to enter into an agreement with the federal launch range from which it proposes to launch. Orbital recommends that rather than require the range agreement to remain in effect for the term of the license, that the FAA require that it be in effect during the conduct of licensed launches. *Orbital* at 9. The FAA sees no practical difference, but agrees, and revises the regulation accordingly. A licensee should bear in mind, however, that ''launch'' begins with the arrival of a vehicle at the launch site. Accordingly, any agreement must be in place at the time of the vehicle's arrival.

Section 415.77 requires a licensee to maintain those records that pertain to activities carried out under a license issued by the FAA. These records must be retained for at least three years after the completion of all launches conducted under the license.

Section 415.79, as proposed in the NPRM, required a licensee to report certain information before each launch. Because launch begins with the arrival of a launch vehicle at the gate, this section is now clarified to require reporting 60 days prior to flight. Section 415.79(b) regarding provision of the FAA's Launch Notification Form has also been clarified from the FAA's original proposal. The FAA files the Launch Notification Form with U.S. Space Command 15 days prior to flight. Accordingly, the form is now due at noon, Eastern Standard Time, 15 days prior to flight so that the FAA may provide the form to U.S. Space Command in a timely manner. The Federal Aviation Administration/ U.S. Space Command Launch Notification Form is provided in this notice. See Appendix A. Section 415.79(c) is now modified from what was proposed in the NPRM to add a requirement for immediate notification of any mishap involving a fatality or serious injury.

Section 415.81, which replaces former section 415.10, contains requirements for registration of space objects, including a new provision that a licensee need not provide registration information concerning objects owned and registered by the government of the United States. The former version of this requirement provided that a licensee need not provide registration information for objects it placed in space that were owned by a foreign entity. The new provision contains the same proviso. It has, however, come to the attention of the FAA that this requires clarification. The Act requires that a foreign entity controlled by a U.S. citizen which launches outside the territory of any nation obtain an FAA license to launch. 49 U.S.C. 70104(a)(3). Applying these principles to an actual case, the FAA found that Sea Launch, a Cayman Islands partnership, which intends to launch from international waters, required a launch license on account of the control Boeing Commercial Space Company, a U.S. company, exercised over the partnership. 49 U.S.C. 70104(a)(3), 70102(1)(C); 14 CFR 401.5. Because Sea Launch is a U.S. citizen for licensing purposes, the FAA requires data pertinent to registration for Sea Launch's upper stage.

Section 415.83 requires a licensee to comply with financial responsibility requirements as specified in a license or license order.

Section 415.85 explains that a licensee is required to cooperate with the compliance monitoring responsibilities of the FAA.

Subpart F describes the FAA's safety review for a proposed launch from a launch site not operated by a federal launch range. The FAA will conduct a review on an individual, case by case basis until it issues regulations of general applicability. The FAA will take this opportunity to advise applicants to bear in mind that a case by case review still must conform to existing standards and precedent. For example, part of the reason that the FAA relies on federal launch range safety reviews is because of the testing and reviews the ranges conduct of a launch operator's flight safety system, which, in most cases, contain a flight termination system. Accordingly, when a federal launch range is not assessing the adequacy of a launch operator's flight safety system, it is incumbent upon the FAA to do so.

Subpart G incorporates the FAA's environmental review requirements, the former sections 415.31 and 415.33, which require the FAA to comply with applicable environmental laws and regulations, and state that an applicant must provide the FAA with the information required for doing so. The renumbering of these provisions represents no substantive change from the current regulations. In response to the NPRM relocation proposal, the Environmental Protection Agency (EPA) commented that the environmental review process for licensing commercial launch activities should reference FAA Order 1050.1D. This change is incorporated here. Additionally, the EPA requested that section 415.101 reference other informal FAA guidance documents. The FAA notes that informal guidance documents are available, and will confer with a license applicant regarding the applicability of the guidance. The FAA also notes that the NPRM text omitted the proposed section revisions. They are now included in the regulatory text.

Part 417—License To Operate a Launch Site

Because the FAA is removing and reserving part 411, which contains section 411.3 regarding the operation of a launch site, the FAA now creates part 417 to govern licensing the operation of a launch site. The FAA will license the operation of a launch site on an individual, case by case basis until it issues regulations of general applicability. Until then, an applicant for a license to operate a launch site should refer to the FAA's draft guidelines and pre-application consultation for assistance. This part also now contains the requirements governing an environmental review for licensing the operation of a launch site previously located in 14 CFR 415.31–33.

Paperwork Reduction Act

Section 441 of this rule contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule and titled, Commercial Space Transportation Licensing Regulations, were submitted to the Office of Management and Budget for review. The collection of information was approved and assigned OMB control number 2120–0608. Information collected includes: data to support both policy and payload reviews; evidence that supports launch safety requirements, and submitted environmental impact statement (EIS) materials. The required information will be used to determine if applicant proposals for conducting commercial space launches can be done in a safe manner as set forth in regulations and in the licenses and the license orders issued by the FAA. Comments received on the reporting requirements associated with this rule have been discussed earlier in the preamble. Respondents are license

applicants and licensees. The estimated number of respondents on an annual basis is six. The estimated annual burden is 2914 hours.

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 number associated with this collection of information is 2120–0608.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits. This evaluation was conducted in accordance with Executive Order 12866, which directs that each Federal agency can propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. This document also includes an initial regulatory flexibility determination, required by the Regulatory Flexibility Act of 1980, and an international trade impact assessment, required by the Office of Management and Budget. This rule is considered a significant regulatory action under section 3 (f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. The rule is considered significant under Department of Transportation Policies and Procedures, 44 FR 11034 (Feb. 26, 1979). In addition, for the reasons stated under the ''Trade Impact Statement'' and the '' Regulatory Flexibility Determination,'' the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Economic Impacts

The Federal Aviation Administration (FAA) is modifying its commercial space licensing regulations to streamline its licensing process while continuing to ensure safety and continuing to preserve the flexibility required to address multiple launch technologies and associated issues. With this rulemaking, the FAA is clarifying its license application procedures, codifying its practice of issuing launch-specific licenses and launch operator licenses, increasing the duration of launch operator licenses from two years to five years, and defining the launch period so that the scope of a launch license is narrower than it has been under current practice.

This rulemaking is expected to result in quantifiable cost savings compared to current practice because of the increased duration of the launch operator license. Increasing the duration of the launch operator license will decrease paperwork and administrative costs both to government and to industry.

The cost savings to industry over ten years resulting from the administrative and paperwork impacts are estimated to be $305,000, undiscounted and $185,000, discounted. These savings are primarily due to the fewer number of license renewal applications that are likely to be submitted. The cost savings reflect primarily the fewer number of hours necessary for both submitting the license applications to the FAA and for complying with the financial responsibility requirements when there are fewer licenses covering the same number of launches. No added costs from the paperwork and administrative impacts are expected.

The FAA is expected to receive some cost savings, as well, because of reduced paperwork and administrative costs that result from processing and issuing fewer applications and licenses. Cost savings to the FAA over ten years is estimated to be $424,000, undiscounted and $256,000, discounted. The FAA is expected to incur no costs resulting from the paperwork and administrative impacts. Over the ten-year time horizon of this analysis, the total cost savings to both industry and the FAA is expected to be approximately $729,000, undiscounted and $441,000, discounted.

There are numerous non-quantifiable impacts associated with this final rulemaking. The information coding requirements are expected to increase clarity to both industry and government. Probably more importantly, however, is the fact that firms will be better able to plan future operations because this rulemaking extends the time period of the launch operator license to five years.

The narrower scope of launch licenses under this rulemaking is expected to slightly increase the launch operator's risk of having to pay for any damages to third parties or government property. The activities that will no longer be covered under the narrower scope of the launch license are of low risk (such as ground activities prior to the arrival of the hazardous components of the launch vehicle). The higher burden of risk borne by the licensee should be considered low and inconsequential.

There is also a slightly lower risk to the U.S. Treasury that it will be called upon to indemnify for third-party damages under the ''indemnification'' provisions of the statute, because the launch phase is now more limited. The change in risk to the U.S. Treasury is expected to be minimal. This risk has not been quantified.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency must so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rulemaking and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the regulatory Flexibility Act, U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Potentially Affected Entities

The Small Business Administration has defined small business entities relating to space vehicles [SIC codes 3761, 3764, and 3769] as entities comprising fewer than 1000 employees. The potentially affected entities are Lockheed-Martin, Boeing, Orbital Sciences Corporation, Sea Launch, Beal Aerospace Technologies and Universal Space Lines. Lockheed-Martin, Boeing and Orbital Sciences Corporation all

have more than 1,000 employees and are therefore not small entities. Sea Launch is a partnership of various entities that includes Boeing and therefore would not be considered a small entity. Beal and Universal Space Lines each have under 1,000 employees and can therefore be considered small entities. According to an FAA forecast, Beal Aerospace Technologies will be issued a launch operator license in 2000 and Universal Space Lines will be issued a launch operator license in 2002.

This final rulemaking will result in a cost savings to the launch operator. It primarily results from renewing a license every five years instead of two years. To calculate the annualized cost savings, the FAA discounted the costs or cost savings for the appropriate year. The net total cost savings for Beal Aerospace is $13,204 and the net total cost savings for Universal Space Lines is $8,442. The net total cost savings for the period 1999–2008 is then annualized by multiplying the net total cost savings for each of the affected firms by the 10 year, 7 percent annualization factor (.142378). The FAA estimates that the annualized cost savings for Beal Aerospace is $1,880 ($13,204 × 142378 = $1,880) and the annualized cost savings for Universal Space Lines is $1,202 ($8,442 × 142378 = $1,202).

The FAA has little financial information to calculate whether the projected cost savings represents a significant amount to these two firms. However, according to the Beal Aerospace website, over 70 people currently work for Beal Aerospace. They project that the firm will grow to more than 200 people over the next ten years. Moreover, the same source states that: ''Beal Aerospace is fully financed, up to $250M.'' The FAA concludes that the annualized cost savings of $1,880 does not represent a significant amount for this firm. Even less information is available on Universal Space Lines. However, one article quotes John Grady, Universal's chief financial officer by stating that: ''Initially the company will hire about 40 people—mostly in technological and engineering positions. In three years, employment is expected to rise to 100.'' The same article states that: ''The initial plan is to manufacture low-cost, two-stage orbital launch vehicles capable of launching 3,000-pound and greater satellite payloads.'' If 40 people each hypothetically earned $50,000 annually, then the annual cost to employ these individuals would be at least $2 million. Comparing the hypothetical annual cost of employing these individuals against the net cost savings of this final rulemaking, the FAA again concludes that the annualized cost savings of $1,202 does not represent a significant amount for this firm.

International Trade Impact Assessment

This final rulemaking will not constitute a barrier to international trade. This rulemaking affects launch activities located within the United States and launch activities abroad that have substantial U.S. involvement. In fact, if the anticipated cost savings result and are passed along to launch service customers in the form of reduced prices, it is possible that the international competitiveness of U.S. commercial launch services will be enhanced.

Federalism Implications

The regulations 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the UMRA), 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 officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will 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 final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects

14 CFR Part 411

Space transportation and exploration.

14 CFR Part 413

Confidential business information, Space transportation and exploration.

14 CFR Part 415

Aviation safety, Environmental protection, Space transportation and exploration.

14 CFR Part 417

Environmental protections, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter III of Title 14 of the Code of Federal Regulations as follows:

SUBCHAPTER A—GENERAL

PART 401—ORGANIZATION AND DEFINITIONS

1. The authority citation for part 401 is revised to read as follows:

Authority: 49 U.S.C. 70102.

2. Section 401.5 is revised to read as follows:

§ 401.5 Definitions.

As used in this chapter—

Act means 49 U.S.C. Subtitle IX, Commercial Space Transportation, ch. 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70121.

Amateur rocket activities means launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—i.e., gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

Associate Administrator means the Associate Administrator for Commercial Space Transportation, Federal Aviation

Administration, or any person designated by the Associate Administrator to exercise the authority or discharge the responsibilities of the Associate Administrator.

Federal launch range means a launch site, from which launches routinely take place, that is owned and operated by the government of the United States.

Hazardous materials means hazardous materials as defined in 49 CFR 172.101.

Launch means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes activities involved in the preparation of a launch vehicle for flight, when those activities take place at a launch site in the United States. The term launch includes the flight of a launch vehicle and pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site. Flight ends after the licensee's last exercise of control over its launch vehicle.

Launch accident means an unplanned event occurring during the flight of a launch vehicle resulting in the known impact of a launch vehicle, its payload or any component thereof outside designated impact limit lines; or a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the flight; or any damage estimated to exceed $25,000 to property not associated with the flight that is not located at the launch site or designated recovery area.

Launch incident means an unplanned event occurring during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or failure of the licensee's safety organization, design or operations.

Launch operator means a person who conducts or who will conduct the launch of a launch vehicle and any payload.

Launch site means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities at that location.

Launch vehicle means a vehicle built to operate in, or place a payload in, outer space or a suborbital rocket.

Mishap means a launch accident, a launch incident, failure to complete a launch as planned, or an unplanned event or series of events resulting in a fatality or serious injury (as defined in 49 CFR 830.2) or resulting in greater than $25,000 worth of damage to a payload, a launch vehicle, a launch support facility or government property located on the launch site.

Operation of a launch site means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads.

Payload means an object that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

Person means an individual or an entity organized or existing under the laws of a state or country.

State and United States when used in a geographical sense, mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, The United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

United States citizen means:

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and

(3) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraph (1) or (2) of this definition.

Controlling interest means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraph (1) or (2) of this definition creates a rebuttable presumption that such interest is controlling.

SUBCHAPTER C—LICENSING

PART 411—[REMOVED AND RESERVED]

3. Part 411 is removed and reserved.

4. Part 413 is revised to read as follows:

PART 413—LICENSE APPLICATION PROCEDURES.

Sec.

413.1 Scope.
413.3 Who must obtain a license.
413.5 Pre-application consultation.
413.7 Application.
413.9 Confidentiality.
413.11 Acceptance of an application.
413.13 Complete application.
413.15 Review period.
413.17 Continuing accuracy of application; supplemental information; amendment.
413.19 Issuance of a license.
413.21 Denial of a license application.
413.23 License renewal.

Authority: 49 U.S.C. 70101–70121.

§ 413.1 Scope.

This part prescribes the procedures applicable to all applications submitted under this chapter to conduct licensed activities. These procedures apply to applications for issuance of a license, transfer of an existing license and renewal of an existing license. More specific requirements applicable to obtaining a launch license or a license to operate a launch site are contained in parts 415 and 417 of this chapter, respectively.

§ 413.3 Who must obtain a license.

(a) Any person must obtain a license to launch a launch vehicle from the United States or a license to operate a launch site within the United States.

(b) An individual who is a United States citizen or an entity organized or existing under the laws of the United States or any state must obtain a license to launch a launch vehicle outside of the United States or a license to operate a launch site outside of the United States.

(c) A foreign entity in which a United States citizen has a controlling interest, as defined in section 401.5 of this chapter, must obtain a launch license to launch a launch vehicle from or a license to operate a launch site within—

(1) Any place that is both outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the launch or the operation of the launch site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the launch or the operation of the launch site.

§ 413.5 Pre-application consultation.

A prospective applicant shall consult with the FAA before submitting an application to discuss the application process and potential issues relevant to the FAA's licensing decision. Early consultation enables an applicant to identify potential licensing issues at the planning stage when changes to a license application or to proposed licensed activities are less likely to result in significant delay or costs to the applicant.

§ 413.7 Application.

(a) *Form.* An application must be in writing, in English and filed in

duplicate with the Federal Aviation Administration, Associate Administrator for Commercial Space Transportation, AST–200, Room 331, 800 Independence Avenue, S.W., Washington, D.C. 20591. Attention: Licensing and Safety Division, Application Review.

(b) *Administrative information.* An application must identify the following:

(1) The name and address of the applicant;

(2) The name, address, and telephone number of any person to whom inquiries and correspondence should be directed; and

(3) The type of license for which the applicant is applying.

(c) *Signature and certification of accuracy.* An application must be legibly signed, dated, and certified as true, complete, and accurate by one of the following:

(1) *For a corporation:* An officer authorized to act for the corporation in licensing matters.

(2) *For a partnership or a sole proprietorship:* A general partner or proprietor, respectively.

(3) *For a joint venture, association, or other entity:* An officer or other individual duly authorized to act for the joint venture, association, or other entity in licensing matters.

§ 413.9 Confidentiality.

(a) Any person furnishing information or data to the FAA may request in writing that trade secrets or proprietary commercial or financial data be treated as confidential. The request must be made at the time the information or data is submitted, and state the period of time for which confidential treatment is desired.

(b) Information or data for which any person or agency requests confidentiality must be clearly marked with an identifying legend, such as ''Proprietary Information,'' ''Proprietary Commercial Information,'' ''Trade Secret,'' or ''Confidential Treatment Requested.'' Where this marking proves impracticable, a cover sheet containing the identifying legend must be securely attached to the compilation of information or data for which confidential treatment is requested.

(c) If a person requests that previously submitted information or data be treated confidentially, the FAA will do so to the extent practicable in light of any prior distribution of the information or data.

(d) Information or data for which confidential treatment has been requested or information or data that qualifies for exemption under section 552(b)(4) of Title 5, United States Code, will not be disclosed to the public unless the Associate Administrator determines that the withholding of the information or data is contrary to the public or national interest.

§ 413.11 Acceptance of an application.

The FAA will initially screen an application to determine whether the application is sufficiently complete to enable the FAA to initiate the reviews or evaluations required under any applicable part of this chapter. After completion of the initial screening, the FAA notifies the applicant, in writing, of one of the following:

(a) The application is accepted and the FAA will initiate the reviews or evaluations required for a licensing determination under this chapter; or

(b) The application is so incomplete or indefinite as to make initiation of the reviews or evaluations required for a licensing determination under this chapter inappropriate, and the application is rejected. The notice will state the reason(s) for rejection and corrective actions necessary for the application to be accepted. The FAA may return a rejected application to the applicant or may hold it pending additional submissions by the applicant.

§ 413.13 Complete application.

Acceptance by the FAA of an application does not constitute a determination that the application is complete. If, in addition to the information required by the applicable parts of this chapter, the FAA requires other information necessary for a determination that public health and safety, safety of property and national security and foreign policy interests of the United States are protected during the conduct of a licensed activity, an applicant shall submit the additional information required to show compliance with this chapter.

§ 413.15 Review period.

(a) *180-day review.* Unless otherwise specified in this chapter, the FAA reviews and makes a determination on a license application within 180 days of receipt of an accepted application.

(b) *Review period tolled.* If an accepted application does not provide sufficient information to continue or complete the reviews or evaluations required by this chapter for a licensing determination, or an issue exists that would affect a licensing determination, the FAA notifies the applicant, in writing, and informs the applicant of any information required to complete the application. If further review is impracticable, the 180-day review period shall be tolled pending receipt by the FAA of the requested information.

(c) *120-day notice.* If the FAA has not made a licensing determination within 120 days of receipt of an accepted application, the FAA informs the applicant, in writing, of any outstanding information needed to complete the reviews or evaluations required by this chapter for a licensing determination, or of any pending issues that would affect the licensing determination.

§ 413.17 Continuing accuracy of application; supplemental information; amendment.

(a) An applicant is responsible for the continuing accuracy and completeness of information furnished to the FAA as part of a pending license application. If at any time information provided by an applicant as part of a license application is no longer accurate and complete in all material respects, the applicant shall submit a statement furnishing the new or corrected information. As part of its submission, the applicant shall recertify the accuracy and completeness of the application in accordance with section 413.7. An applicant's failure to comply with any of the requirements set forth in this paragraph is a sufficient basis for denial of a license application.

(b) An applicant may amend or supplement a license application at any time prior to issuance or transfer of a license.

(c) Willful false statements made in any application or document relating to an application or license are punishable by fine and imprisonment under section 1001 of Title 18, United States Code, and by administrative sanctions in accordance with part 405 of this chapter.

§ 413.19 Issuance of a license.

After the FAA completes its reviews and makes the approvals and determinations required by this chapter for a license, the FAA issues a license to an applicant in accordance with this chapter.

§ 413.21 Denial of a license application.

(a) The FAA informs a license applicant, in writing, if its application has been denied and states the reasons for denial.

(b) An applicant whose license application is denied may either:

(1) Attempt to correct any deficiencies identified by the FAA and request reconsideration of the revised application. The FAA has 60 days or the number of days remaining in the 180-day review period, whichever is greater, within which to reconsider its licensing determination; or

(2) Request a hearing in accordance with part 406 of this chapter, for the

purpose of showing why the application should not be denied.

(c) An applicant whose license application is denied after reconsideration under paragraph (b)(1) of this section may request a hearing in accordance with paragraph (b)(2) of this section.

§ 413.23 License renewal.

(a) *Eligibility.* A licensee may apply to renew its license by submitting to the FAA a written application for renewal of the license at least 90 days before the expiration date of the license.

(b) *Application.*

(1) A license renewal application shall satisfy the requirements set forth in this part and any other applicable part of this chapter.

(2) The application may incorporate by reference information provided as part of the application for the expiring license or any modification to that license.

(3) The applicant must describe any proposed changes in its conduct of licensed activities and provide any additional clarifying information required by the FAA.

(c) *Review of application.* The FAA conducts the reviews required under this chapter for a license to determine whether the applicant's license may be renewed for an additional term. The FAA may incorporate by reference any findings that are part of the record for the expiring license.

(d) *Grant of license renewal.* After completion by the FAA of the reviews required by this chapter for a license and issuance of the requisite approvals and determinations, the FAA issues an order amending the expiration date of the license. The FAA may impose additional or revised terms and conditions necessary to protect public health and safety and the safety of property and to protect U.S. national security and foreign policy interests.

(e) *Denial of license renewal.* The FAA informs a licensee, in writing, if the licensee's application for renewal has been denied and states the reasons for denial. A licensee whose application for renewal is denied may follow the procedures set forth in section 413.21 of this part.

5. Part 415 is revised to read as follows:

PART 415—LAUNCH LICENSE

Subpart A—General

Sec.
415.1 Scope.
415.3 Types of launch licenses.
415.5 Policy and safety approvals.
415.7 Payload determination.
415.9 Issuance of a launch license.
415.11 Additional license terms and conditions.
415.13 Transfer of a launch license.
415.15 Rights not conferred by launch license.
415.16–415.20 [Reserved]

Subpart B—Policy Review and Approval

415.21 General.
415.23 Policy review.
415.25 Application requirements for policy review.
415.27 Denial of policy approval.
415.28–415.30 [Reserved]

Subpart C—Safety Review and Approval for Launch From a Federal Launch Range

415.31 General.
415.33 Safety organization.
415.35 Acceptable flight risk.
415.37 Flight readiness and communications plan.
415.39 Safety at end of launch.
415.41 Accident investigation plan.
415.43 Denial of safety approval.
415.44–415.50 [Reserved]

Subpart D—Payload Review and Determination

415.51 General.
415.53 Payloads not subject to review.
415.55 Classes of payloads.
415.57 Payload review.
415.59 Information requirements for payload review.
415.61 Issuance of payload determination.
415.63 Incorporation of payload determination in license application.
415.64–415.70 [Reserved]

Subpart E—Post-Licensing Requirements—Launch License Terms and Conditions

415.71 Public safety responsibility.
415.73 Continuing accuracy of license application; application for modification of license.
415.75 Agreement(s) with federal launch range.
415.77 Records.
415.79 Launch reporting requirements.
415.81 Registration of space objects.
415.83 Financial responsibility requirements.
415.85 Compliance monitoring.
415.86–415.90 [Reserved]

Subpart F—Safety Review and Approval for Launch From a Launch Site not Operated by a Federal Launch Range

415.91 General.
415.93 Denial of safety approval.
415.94–415.100 [Reserved]

Subpart G—Environmental Review

415.101 General
415.103 Environmental information

Appendix A to Part 415—FAA/USSPACECOM Launch Notification Form

Authority: 49 U.S.C. 70101–70121.

Subpart A—General

§ 415.1 Scope.

This part prescribes requirements for obtaining a launch license and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§ 415.3 Types of launch licenses.

(a) *Launch-specific license.* A launch-specific license authorizes a licensee to conduct one or more launches, having the same launch parameters, of one type of launch vehicle from one launch site. The license identifies, by name or mission, each launch authorized under the license. A licensee's authorization to launch terminates upon completion of all launches authorized by the license or the expiration date stated in the license, whichever occurs first.

(b) *Launch operator license.* A launch operator license authorizes a licensee to conduct launches from one launch site, within a range of launch parameters, of launch vehicles from the same family of vehicles transporting specified classes of payloads. A launch operator license remains in effect for five years from the date of issuance.

§ 415.5 Policy and safety approvals.

To obtain a launch license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B, C and F of this part. Only a launch license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 415.7 Payload determination.

A payload determination is required for a launch license unless the proposed payload is exempt from payload review under § 415.53 of this part. The FAA conducts a payload review, as described in subpart D of this part, to make the determination. Either a launch license applicant or a payload owner or operator may request a review of its proposed payload using the application procedures contained in part 413 of this subchapter. Upon receipt of an application, the FAA may conduct a payload review independently of a launch license application.

§ 415.9 Issuance of a launch license.

(a) The FAA issues a launch license to an applicant who has obtained all approvals and determinations required under this chapter for a license.

(b) A launch license authorizes a licensee to conduct a launch or launches in accordance with the representations contained in the licensee's application, subject to the

licensee's compliance with terms and conditions contained in license orders accompanying the license, including financial responsibility requirements.

§ 415.11 Additional license terms and conditions.

The FAA may modify a launch license at any time by modifying or adding license terms and conditions to ensure compliance with the Act and regulations.

§ 415.13 Transfer of a launch license.

(a) Only the FAA may transfer a launch license.

(b) An applicant for transfer of a launch license shall submit a license application in accordance with part 413 of this subchapter and shall meet the requirements of part 415 of this subchapter. The FAA will transfer a license to an applicant who has obtained all of the approvals and determinations required under this chapter for a license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate by reference any findings made part of the record to support the initial licensing determination. The FAA may modify a license to reflect any changes necessary as a result of a license transfer.

§ 415.15 Rights not conferred by launch license.

Issuance of a launch license does not relieve a licensee of its obligation to comply with all applicable requirements of law or regulation that may apply to its activities, nor does issuance confer any proprietary, property or exclusive right in the use of any federal launch range or related facilities, airspace, or outer space.

§§ 415.16–415.20 [Reserved]

Subpart B—Policy Review and Approval

§ 415.21 General.

The FAA issues a policy approval to a license applicant unless the FAA determines that a proposed launch would jeopardize U.S. national security or foreign policy interests, or international obligations of the United States. A policy approval is part of the licensing record on which the FAA's licensing determination is based.

§ 415.23 Policy review.

(a) The FAA reviews a license application to determine whether it presents any issues affecting U.S. national security or foreign policy interests, or international obligations of the United States.

(b) Interagency consultation.

(1) The FAA consults with the Department of Defense to determine whether a license application presents any issues affecting U.S. national security.

(2) The FAA consults with the Department of State to determine whether a license application presents any issues affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section, associated with an applicant's launch proposal.

(c) The FAA advises an applicant, in writing, of any issue raised during a policy review that would impede issuance of a policy approval. The applicant may respond, in writing, or revise its license application.

§ 415.25 Application requirements for policy review.

In its launch license application, an applicant shall—

(a) Identify the model and configuration of any launch vehicle proposed for launch by the applicant.

(b) Identify structural, pneumatic, propellant, propulsion, electrical and avionics systems used in the launch vehicle and all propellants.

(c) Identify foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership;

(2) For a corporation, identify any foreign ownership interests of 10% or more; and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

(d) Identify proposed launch vehicle flight profile(s), including:

(1) Launch site;

(2) Flight azimuths, trajectories, and associated ground tracks and instantaneous impact points;

(3) Sequence of planned events or maneuvers during flight;

(4) Range of nominal impact areas for all spent motors and other discarded mission hardware, within three standard deviations of the mean impact point (a 3-sigma footprint); and

(5) For each orbital mission, the range of intermediate and final orbits of each vehicle upper stage, and their estimated orbital lifetimes.

§ 415.27 Denial of policy approval.

The FAA notifies an applicant, in writing, if it has denied policy approval for a license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 415.28–415.30 [Reserved]

Subpart C—Safety Review and Approval for Launch From a Federal Launch Range

§ 415.31 General.

(a) The FAA conducts a safety review to determine whether an applicant is capable of launching a launch vehicle and its payload without jeopardizing public health and safety and safety of property. The FAA issues a safety approval to a license applicant proposing to launch from a federal launch range if the applicant satisfies the requirements of this subpart and has contracted with the federal launch range for the provision of safety-related launch services and property, as long as those launch services and the proposed use of launch property are within the federal launch range's experience. The FAA evaluates on an individual basis all other safety-related launch services and property associated with an applicant's proposal. A safety approval is part of the licensing record on which the FAA's licensing determination is based.

(b) The FAA advises an applicant, in writing, of any issue raised during a safety review that would impede issuance of a safety approval. The applicant may respond, in writing, or revise its license application.

§ 415.33 Safety organization.

(a) An applicant shall maintain a safety organization and document it by identifying lines of communication and approval authority for all launch safety decisions. Lines of communication, both within the applicant's organization and between the applicant and any federal launch range providing launch services, shall be employed to ensure that personnel perform launch safety operations in accordance with range safety requirements and with plans and procedures required by this subpart. Approval authority shall be employed to ensure compliance with range safety requirements and with plans and procedures required by this subpart.

(b) *Safety official.* An applicant shall identify by name, title, and qualifications, a qualified safety official authorized to examine all aspects of the applicant's launch safety operations and to monitor independently personnel compliance with the applicant's safety policies and procedures. The safety official shall report directly to the person responsible for an applicant's

licensed launches, who shall ensure that all of the safety official's concerns are addressed prior to launch.

§ 415.35 Acceptable flight risk.

(a) *Flight risk through orbital insertion or impact.* Acceptable flight risk through orbital insertion for an orbital launch vehicle, and through impact for a suborbital launch vehicle, is measured in terms of the expected average number of casualties (E_c) to the collective members of the public exposed to debris hazards from any one launch. To obtain safety approval, an applicant shall demonstrate that the risk level associated with debris from an applicant's proposed launch shall not exceed an expected average number of 0.00003 casualties per launch ($E_c \leq 30 \times 10^{-6}$).

(b) *Hazard identification and risk assessment.* To demonstrate compliance with this section, an applicant shall submit an analysis that identifies hazards and assesses risks to public health and safety and safety of property associated with nominal and non-nominal flight under its launch proposal.

(c) A launch vehicle shall be designed to ensure that flight risks meet the criteria set forth in this section. An applicant shall identify and describe the following:

(1) Launch vehicle structure, including physical dimensions and weight;

(2) Hazardous and safety critical systems, including propulsion systems; and

(3) Drawings and schematics for each system identified under paragraph (c)(2) of this section.

(d) A launch vehicle shall be operated in a manner that ensures that flight risks meet the criteria set forth in this section. An applicant shall identify all launch operations and procedures that must be performed to ensure acceptable flight risks.

§ 415.37 Flight readiness and communications plan.

(a) *Flight readiness requirements.* An applicant shall designate an individual responsible for flight readiness. The applicant shall submit the following procedures for verifying readiness for safe flight:

(1) Launch readiness review procedures involving the applicant's flight safety personnel and federal launch range personnel involved in the launch. The procedures shall ensure a launch readiness review is conducted during which the individual designated under paragraph (a) of this section is provided with the following information to make a judgement as to flight readiness:

(i) Flight-readiness of safety-related launch property and services to be provided by a federal launch range;

(ii) Flight-readiness of launch vehicle and payload;

(iii) Flight-readiness of flight safety systems;

(iv) Mission rules and launch constraints;

(v) Abort, hold and recycle procedures;

(vi) Results of dress rehearsals and simulations conducted in accordance with paragraph (a)(4) of this section;

(vii) Unresolved safety issues as of the launch readiness review and plans for addressing and resolving them; and

(viii) Any additional safety information required by the individual designated under paragraph (a) of this section to determine flight readiness.

(2) Procedures that ensure mission constraints, rules and abort procedures are listed and consolidated in a safety directive or notebook approved by licensee flight safety and federal launch range personnel;

(3) Procedures that ensure currency and consistency of licensee and federal launch range countdown checklists;

(4) Dress rehearsal procedures that—

(i) Ensure crew readiness under nominal and non-nominal flight conditions;

(ii) Contain criteria for determining whether to dispense with one or more dress rehearsals; and

(iii) Verify currency and consistency of licensee and federal launch range countdown checklists.

(5) Procedures for ensuring the licensee's flight safety personnel adhere to federal launch range crew rest rules.

(b) *Communications plan requirements.* An applicant shall submit a communications plan providing licensee and federal launch range personnel communications procedures during countdown and flight. Effective issuance and communication of safety-critical information during countdown shall include hold/resume, go/no go and abort commands by licensee and federal launch range personnel during countdown. The communications plan shall describe the authority of licensee and federal launch range personnel, by individual or position title, to issue these commands. The communications plan shall also ensure that—

(1) Communication networks are assigned so that personnel identified under paragraph (b) of this section have direct access to real-time safety-critical information required for issuing hold/resume, go/no go and abort decisions and commands;

(2) Personnel identified under paragraph (b) of this section monitor common intercom channel(s) during countdown and flight; and

(3) A protocol is established for utilizing defined radio telephone communications terminology.

(c) An applicant shall submit procedures that ensure that licensee and federal launch range personnel receive a copy of the communications plan required by paragraph (b) of this section, and that the federal launch range concurs in the communications plan.

§ 415.39 Safety at end of launch.

To obtain safety approval, an applicant must demonstrate for any proposed launch that for all launch vehicle stages or components that reach earth orbit—

(a) There will be no unplanned physical contact between the vehicle or its components and the payload after payload separation;

(b) Debris generation will not result from the conversion of energy sources into energy that fragments the vehicle or its components. Energy sources include chemical, pressure, and kinetic energy; and

(c) Stored energy will be removed by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy. Other equivalent procedures may be approved in the course of the licensing process.

§ 415.41 Accident investigation plan.

(a) An applicant shall submit an accident investigation plan (AIP) containing the applicant's procedures for reporting and responding to launch accidents, launch incidents, or other mishaps, as defined in § 401.5 of this chapter. The AIP shall be signed by an individual authorized to sign and certify the application in accordance with § 413.7(c) of this chapter, and the safety official designated under § 415.33(b) of this subpart.

(b) *Reporting requirements.* An AIP shall provide for—

(1) Immediate notification to the Federal Aviation Administration (FAA) Washington Operations Center in case of a launch accident, a launch incident or a mishap that involves a fatality or serious injury (as defined in 49 CFR § 830.2).

(2) Notification within 24 hours to the Associate Administrator for Commercial Space Transportation or the Federal Aviation Administration (FAA) Washington Operations Center in the event of a mishap, other than those in

§ 415.41 (b) (1), that does not involve a fatality or serious injury (as defined in 49 CFR 830.2).

(3) Submission of a written preliminary report to the FAA, Associate Administrator for Commercial Space Transportation, in the event of a launch accident or launch incident, as defined in § 401.5 of this chapter, within five days of the event. The report shall identify the event as either a launch accident or launch incident, and shall include the following information:

(i) Date and time of occurrence;

(ii) Description of event;

(iii) Location of launch;

(iv) Launch vehicle;

(v) Any payload;

(vi) Vehicle impact points outside designated impact lines, if applicable;

(vii) Number and general description of any injuries;

(viii) Property damage, if any, and an estimate of its value;

(ix) Identification of hazardous materials, as defined in § 401.5 of this chapter, involved in the event, whether on the launch vehicle, payload, or on the ground;

(x) Action taken by any person to contain the consequences of the event; and

(xi) Weather conditions at the time of the event.

(c) *Response plan.* An AIP shall contain procedures that—

(1) Ensure the consequences of a launch accident, launch incident or other mishap are contained and minimized;

(2) Ensure data and physical evidence is preserved;

(3) Require the licensee to report to and cooperate with FAA and National Transportation Safety Board (NTSB) investigations and designate one or more points of contact for the FAA or NTSB; and

(4) Require the licensee to identify and adopt preventive measures for avoiding recurrence of the event.

(d) *Investigation plan.* An AIP shall contain—

(1) Procedures for investigating the cause of a launch accident, launch incident or other mishap;

(2) Procedures for reporting investigation results to the FAA; and

(3) Delineated responsibilities, including reporting responsibilities for personnel assigned to conduct investigations and for any one retained by the licensee to conduct or participate in investigations.

§ 415.43 Denial of safety approval.

The FAA notifies an applicant, in writing, if it has denied safety approval for a license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 415.44–415.50 [Reserved]

Subpart D—Payload Review and Determination

§ 415.51 General.

The FAA reviews a payload proposed for launch to determine whether a license applicant or payload owner or operator has obtained all required licenses, authorization, and permits, unless the payload is exempt from review under § 415.53 of this subpart. If not otherwise exempt, the FAA reviews a payload proposed for launch to determine whether its launch would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States. A payload determination is part of the licensing record on which the FAA's licensing determination is based.

§ 415.53 Payloads not subject to review.

The FAA does not review payloads that are—

(a) Subject to regulation by the Federal Communications Commission (FCC) or the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA); or

(b) Owned or operated by the U.S. Government.

§ 415.55 Classes of payloads.

The FAA may review and issue findings regarding a proposed class of payload, e.g., communications, remote sensing or navigation. However, each payload is subject to compliance monitoring by the FAA before launch to determine whether its launch would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States. The licensee is responsible for providing current information, in accordance with § 415.79(a), regarding a payload proposed for launch not later than 60 days before a scheduled launch.

§ 415.57 Payload review.

(a) *Timing.* A payload review may be conducted as part of a license application review or may be requested by a payload owner or operator in advance of or apart from a license application.

(b) *Interagency consultation.* The FAA consults with other agencies to determine whether launch of a proposed payload or payload class would present any issues affecting public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(1) The FAA consults with the Department of Defense to determine whether launch of a proposed payload or payload class would present any issues affecting U.S. national security.

(2) The FAA consults with the Department of State to determine whether launch of a proposed payload or payload class would present any issues affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (b) of this section associated with an applicant's launch proposal.

(c) The FAA advises a person requesting a payload determination, in writing, of any issue raised during a payload review that would impede issuance of a license to launch that payload or payload class. The person requesting payload review may respond, in writing, or revise its application.

§ 415.59 Information requirements for payload review.

(a) A person requesting review of a particular payload or payload class shall identify the following:

(1) Payload name;

(2) Payload class;

(3) Physical dimensions and weight of the payload;

(4) Payload owner and operator, if different from the person requesting payload review;

(5) Orbital parameters for parking, transfer and final orbits;

(6) Hazardous materials, as defined in § 401.5 of this chapter, and radioactive materials, and the amounts of each;

(7) Intended payload operations during the life of the payload; and

(8) Delivery point in flight at which the payload will no longer be under the licensee's control.

(b) [Reserved]

§ 415.61 Issuance of payload determination.

(a) The FAA issues a favorable payload determination unless it determines that launch of the proposed payload would jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States. The FAA advises any person who has requested a payload review of its determination, in writing. The notice states the reasons for the

determination in the event of an unfavorable determination.

(b) Any person issued an unfavorable payload determination may respond to the reasons for the determination and request reconsideration.

§ 415.63 Incorporation of payload determination in license application.

A favorable payload determination issued for a payload or class of payload may be included by a license applicant as part of its application. However, any change in information provided under section 415.59 of this subpart must be reported in accordance with section 413.17 of this chapter. The FAA determines whether a favorable payload determination remains valid in light of reported changes and may conduct an additional payload review.

§ 415.64–415.70 [Reserved]

Subpart E—Post-Licensing Requirements—Launch License Terms and Conditions

§ 415.71 Public safety responsibility.

A launch licensee is responsible for ensuring the safe conduct of a licensed launch and for ensuring that public safety and safety of property are protected at all times during the conduct of a licensed launch.

§ 415.73 Continuing accuracy of license application; application for modification of license.

(a) A launch licensee is responsible for the continuing accuracy of representations contained in its application for the entire term of the license. A launch licensee must conduct a licensed launch and carry out launch safety procedures in accordance with its application. A licensee's failure to comply with the requirements of this paragraph is sufficient basis for suspension or revocation of a license.

(b) After a launch license has been issued, a licensee must apply to the FAA for modification of the license if:

(1) The launch licensee proposes to conduct a launch or carry out a launch safety procedure or operation in a manner that is not authorized by the license; or

(2) Any representation contained in the license application that is material to public health and safety or safety of property would no longer be accurate and complete or would not reflect the launch licensee's procedures governing the actual conduct of a launch. A change is material to public health and safety or safety of property if it alters or affects the licensee's launch plans or procedures submitted in accordance with subpart D of this part, class of payload, orbital destination, type of launch vehicle, flight path, launch site, launch point, or any safety system, policy, procedure, requirement, criteria or standard.

(c) An application to modify a launch license shall be prepared and submitted in accordance with part 413 of this chapter. The launch licensee shall indicate any part of its license or license application that would be changed or affected by a proposed modification.

(d) The FAA reviews approvals and determinations required by this chapter to determine whether they remain valid in light of a proposed modification. The FAA approves a modification that satisfies the requirements set forth in this part.

(e) Upon approval of modification, the FAA issues either a written approval to the launch licensee or a license order modifying the license if a stated term or condition of the license is changed, added or deleted. A written approval has the full force and effect of a license order and is part of the licensing record.

§ 415.75 Agreement(s) with federal launch range.

Prior to conducting a licensed launch from a federal launch range, a launch licensee or applicant shall enter into an agreement with a federal launch range providing for access to and use of U.S. Government property and services required to support a licensed launch from the facility and for public safety related operations and support. The agreement shall be in effect for the conduct of any licensed launch. A launch licensee shall comply with any requirements of the agreement(s) that may affect public safety and safety of property during the conduct of a licensed launch, including flight safety procedures and requirements.

§ 415.77 Records.

(a) A launch licensee shall maintain all records necessary to verify that licensed launches are conducted in accordance with representations contained in the licensee's application. A launch licensee shall retain records for three years after completion of all launches conducted under the license.

(b) In the event of a launch accident or launch incident, as defined in § 405.1 of this chapter, a launch licensee shall preserve all records related to the event. Records shall be retained until completion of any federal investigation and until the FAA advises the licensee that the records need not be retained. The licensee shall make available to federal officials for inspection and copying all records required to be maintained under these regulations.

§ 415.79 Launch reporting requirements.

(a) Not later than 60 days before each flight conducted under a launch operator license, a licensee shall provide the FAA the following launch-specific information:

(1) Payload information contained in § 415.59 of this part;

(2) Flight information, including the launch vehicle, planned flight path, including staging and impact locations, and on-orbit activity of the launch vehicle including payload delivery point(s); and

(3) Mission specific launch waivers, approved or pending, from a federal launch range from which the launch will take place, that are unique to the launch and may affect public safety.

(b) Not later than noon, EST, 15 days before each licensed flight a licensee shall submit to the FAA a completed Federal Aviation Administration/U.S. Space Command (FAA/USSPACECOM) Launch Notification Form (OMB No. 2120–0608).

(c) A launch licensee shall report a launch accident, launch incident, or a mishap that involves a fatality or serious injury (as defined in 49 CFR 830.2) immediately to the Federal Aviation Administration (FAA) Washington Operations Center and provide a written preliminary report in the event of a launch accident or launch incident, in accordance with the accident investigation plan (AIP) submitted as part of its license application under § 415.41 of this part.

§ 415.81 Registration of space objects.

(a) To assist the U.S. Government in implementing Article IV of the 1975 Convention on Registration of Objects Launched into Outer Space, each licensee shall provide to the FAA the information required by paragraph (b) of this section for all objects placed in space by a licensed launch, including a launch vehicle and any components, except:

(1) Any object owned and registered by the U.S. Government; and

(2) Any object owned by a foreign entity.

(b) For each object that must be registered in accordance with this section, not later than thirty (30) days following the conduct of a licensed launch, a licensee shall submit the following information:

(1) The international designator of the space object(s);

(2) Date and location of launch;

(3) General function of the space object; and

(4) Final orbital parameters, including:

(i) Nodal period;

(ii) Inclination;
(iii) Apogee; and
(iv) Perigee.

§ 415.83 Financial responsibility requirements.

A launch licensee shall comply with financial responsibility requirements specified in a license or license order.

§ 415.85 Compliance monitoring.

A launch licensee shall allow access by, and cooperate with, federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, or of the licensee's contractors or subcontractors, associated with the conduct of a licensed launch.

§ 415.86–415.90 [Reserved]

Subpart F—-Safety Review and Approval for Launch From a Launch Site Not Operated by a Federal Launch Range

§ 415.91 General.

The FAA evaluates on an individual basis the safety-related elements of an applicant's proposal to launch a launch vehicle from a launch site not operated by a federal launch range. The FAA issues a safety approval to a license applicant proposing to launch from a launch site not operated by a federal launch range when the FAA determines that the launch demonstrates an equivalent level of safety to that provided by a launch from a federal launch range as set forth in subpart C of this part. A safety approval is part of the licensing record on which the FAA's licensing determination is based.

§ 415.93 Denial of safety approval.

The FAA notifies an applicant, in writing, if it has denied safety approval for a license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 415.94–415.100 [Reserved]

Subpart G—Environmental Review

§ 415.101 General.

An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with a proposed launch. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environment Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D.

§ 415.103 Environmental information.

An applicant shall submit environmental information concerning:

(a) A proposed launch site not covered by existing environmental documentation;

(b) A proposed launch vehicle with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) A proposed launch from an established launch site involving a vehicle with characteristics falling measurably outside the parameters of any existing environmental impact statement that applies to that site;

(d) A proposed payload that may have significant environmental impacts in the event of a mishap; and

(e) Other factors as determined by the FAA.

BILLING CODE 4910–13–P

Appendix A to Part 415—FAA/USSPACECOM Launch Notification Form

Form Approved OMB No. 2120-0608

U.S. Department of Transportation
Federal Aviation Administration

FAA/USSPACECOM Launch Notification

1) Launch Site & Launch Date:
2) Earliest and Latest possible Launch Time (GMT):
3) List of objects to achieve orbit - to include payload description, Rocket bodies, and all other objects:
4) Launch Booster, sustainer, and strap-on descriptions:
5) Launch operator POC - to include name, address, & phone numbers:
6) Orbital Parameters for all objects achieving orbit a) inertial launch azimuth at liftoff:
b) inertial flight azimuth after liftoff:
c) epoch time:
d) nominal period (min):
e) inclination (deg):
f) eccentricity:
g) semimajor axis (km):
h) argument of perigee (deg):
i) right ascension of ascending node (deg):
j) mean anomaly (deg):
k) start time of orbit (hh:mm:ss after launch):
l) end time of orbit (hh:mm:ss after launch):
7) Injection data a) injection point latitude (deg n or s) & longitude (deg e):
b) inertial azimuth at injection point:
c) height above earth (km):

FAA Form 8800-1 (7-98) PAGE 1

FAA/USSPACECOM Launch Notification

d) injection time (hh:mm:ss after liftoff):

8) Sequence of Events from liftoff to final injection. Give the times (hh:mm:ss after liftoff)

a) separation of each motor:

b) ignition of each motor:

c) cutoff of each motor:

d) jettison of pieces:

e) maneuvers:

f) reorientations:

g) deorbit:

h) ejection of special packages or other experiments:

9) Optional - Schedule for events (not included in no. 8), such as ejection or experiments, maneuvering (unclassified missions), jettison of parts, extension of antenna and solar arrays, venting, spinning or despinning attitude changes, reorientation, or anything which may affect the orbital characteristics:

10) A brief narrative description of the mission:

11) Transmitting frequencies and power (required only if space surveillance is required), including device, band, power (watts), frequency (mhz), and emission scheduled by fixed program, command, or transponder tracking:

12) Orbital objects cataloging instructions (include all orbital objects listed in no. 3, including common name, international designation, and country:

FAA Form 8800-1 (7-98) PAGE 2

BILLING CODE 4910–13–C

6. Subchapter C of Chapter III, title 14, Code of Federal Regulations, is amended by adding a new part 417 to read as follows:

PART 417—LICENSE TO OPERATE A LAUNCH SITE

Sec.
417.101 General.
417.103 Issuance of a license to operate a launch site.
417.105 Environmental.
417.107 Environmental information.

Authority: 49 U.S.C. 70101–70121.

§ 417.101 General.

The FAA evaluates on an individual basis an applicant's proposal to operate a launch site.

§ 417.103 Issuance of a license to operate a launch site.

(a) The FAA issues a license to operate a launch site when it determines that an applicant's operation of the launch site does not jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(b) A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and condition contained in any license order accompanying the license.

§ 417.105 Environmental.

An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with proposed operation of a launch site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environment Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D.

§ 417.107 Environmental information.

An applicant shall submit environmental information concerning:

(a) A proposed launch site not covered by existing environmental documentation; and

(b) Other factors as determined by the FAA.

Issued in Washington, DC on April 13, 1999.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–9639 Filed 4–20–99; 8:45 am]

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federal register

Wednesday
April 21, 1999

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 400 et al.

Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations; Proposed Rule

Proposed Advisory Circular (AC) 431–01, Reusable Launch Vehicle System Safety Process and AC 431–02, Expected Casualty Calculations for Commercial Space Launch and Reentry Missions; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 400, 401, 404, 405, 406, 413, 415, 431, 433, and 435

[Docket No. FAA–1999–5535; Notice No. 99–04]

RIN 2120–AG71

Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the commercial space transportation licensing regulations by establishing operational requirements for launches of reusable launch vehicles (RLVs) and the authorized conduct of commercial space reentry activities. The proposed rule would respond to advancements in the development of commercial RLV and reentry capability and enactment of legislation extending the FAA's licensing authority to reentry activities. The agency is proposing requirements that limit risk to the public from RLV and reentry operations and seeks public comment on appropriate measures to carry out its licensing and safety responsibilities.

DATES: Comments must be received on or before July 20, 1999.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5535, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments also may be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart W. Jackson, AST–100, Space Systems Development Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7903; or Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation, (202) 366–9320.

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered to the extent possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–5535.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone (703) 321–3339) or the Government Printing Office's electronic bulletin board service (telephone (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

SUPPLEMENTARY INFORMATION:

Background

General

The Commercial Space Act of 1998 (CSA), Public Law 105–303, extends the licensing authority of the Secretary of Transportation under 49 U.S.C. Subtitle IX, chapter 701 (known as the Commercial Space Launch Act or CSLA), to reentry vehicle operators and the operation of reentry sites by a commercial or non-Federal entity. Under the CSA, the Secretary is authorized to license reentry of a reentry vehicle, including reusable launch vehicles, and the operation of reentry sites when those activities are conducted within the United States or by U.S. citizens abroad. The Secretary is charged with exercising licensing authority protection of public health and safety and the safety of property as well as consistency with U.S. national security and foreign policy interests, and treaty obligations entered into by the United States. By delegation of authority, the Administrator of the Federal Aviation Administration is responsible for carrying out the Secretary's licensing and safety mandate with respect to commercial space transportation and the Administrator has, in turn, delegated regulatory and related authority to the Associate Administrator for Commercial Space Transportation (AST).

Amendment of the CSLA responds to development of reentry capability and reusable launch vehicle technology by the commercial space industry. Market forecasts of launch demand and international launch competition are driving industry to invest in means of accomplishing lower cost and more efficient access to space and specifically to low earth orbit. Reusable, or partially reusable vehicles that are capable of payload delivery and return to Earth for reflight are considered by many in industry as integral to reducing launch costs. For years, expendable launch vehicles (ELVs) have successfully provided commercial payload delivery services; however, the ability to survive the rigors of launch and the prospect of multiple missions per vehicle may dramatically lower price-per-pound-to-orbit launch costs. Growing interest in the ability to provide reliable round-trip space-route services, such as satellite

retrieval, package delivery, and ultimately space tourism, is attracting investment in a new class of space launch vehicle that can provide orbital launch and reentry services.

A reusable launch vehicle, or RLV, differs from an expendable launch vehicle in that the vehicle, or a significant portion of it, would be designed to survive launch and reentry from space and maintain functional integrity. Proponents of reusable launch technology envision rapid reconditioning and turn-around time to maximize efficiency and profitability.

Reusable launch vehicles are one form of reentry capability that would be subject to FAA licensing and safety requirements under the Commercial Space Act of 1998. Any vehicle, reusable or not, that is designed and operated such that it would intentionally return to Earth from Earth orbit or outer space, substantially intact, would require an FAA license. A person who offers use of a designated site for purposes of containing landing impacts would also be subject to FAA licensing to assure public safety is maintained if that person is a citizen of the United States or if the reentry site is in the United States.

Launch vehicle survivability poses unique issues for the FAA in carrying out its safety mandate. Except for the U.S. Space Transportation System (STS) which transports the space shuttle, only ELVs are launched from the United States and the vast majority of ELV launches have been from federally owned and operated launch sites, such as Cape Canaveral Air Station (CCAS) or Vandenberg Air Force Base (VAFB). ELVs having an orbital delivery capability are generally launched over unpopulated ocean areas so that debris generated from a vehicle failure would impact the Earth away from population. Risk to public safety is assessed by Federal ranges and launches proceed from Federal sites only if public risk is contained at an acceptable level. ELVs rely upon flight termination systems (FTS) that assure safe flight by destroying a vehicle if it is traveling beyond pre-approved boundaries so as to endanger the public. The boundaries, or impact limit lines, are drawn in advance of a launch and ensure that vehicle debris is confined within an unpopulated area in the event of vehicle failure or FTS activation.

In contrast, RLVs would be designed for recovery and reuse. Therefore, launch safety, for the most part, may be assured through non-destructive means of terminating flight. In the event of a malfunction, an RLV may be able to return to its launch site or fly to an alternative landing site where the problem can be corrected and flight attempted again. Or, in another scenario, thrust termination combined with a soft or slowed landing may allow a vehicle operator to recover its vehicle for reconditioning and reuse. If a landing can be accomplished safely in terms of public risk, the operator would prefer it to total loss of the vehicle, and may purposely select an in-land site for the conduct of an RLV launch rather than risk launching over water where recovery would be difficult and costly.

Return to Earth of a substantially intact vehicle also presents safety issues for the FAA. Although spent vehicle stages return to Earth periodically, as does other space debris, it is generally expected that reentering space objects burn up upon reentry into the Earth's atmosphere and do not present a threat to public safety. Reentry vehicles would be designed and controlled to the extent necessary to avoid burning up upon entry into the Earth's atmosphere and the FAA's safety program must ensure that they impact Earth in a manner that does not jeopardize public health and safety or the safety of property. Until accuracy and reliability of a vehicle's performance can be demonstrated through rigorous testing and numerous flights, other risk mitigation measures may be necessary to limit risks to the public from an off-site landing, explosion or release of toxic substances.

The proposed rules would establish general performance-based standards for the launch of an RLV from any launch site and requirements applicable to commercial reentry activities. The approach proposed by the FAA in this notice is intended to provide the emerging commercial space transportation industry with the requisite flexibility to develop commercially feasible reentry and reusable launch vehicle systems whose operation would not jeopardize public safety.

Reentry Vehicles and Reusable Launch Vehicle Proposals

Extension of the FAA's licensing authority to cover reentry operations responds to the development of RLV technology by a number of commercial entities that have begun to develop and test RLV concepts. Not all test operations require FAA launch and reentry licensing and may be covered by other agency authority. A number of RLV technology developers have begun preliminary consultations with the FAA to ascertain the nature and extent of FAA safety requirements and authorization needed for flight of their vehicles and the FAA encourages early discussion between the agency and aerospace companies to avoid regulatory obstacles down the road that may delay operations.

The proposed rules would apply to both commercial reentry vehicle and RLV activities. Not all RLVs are reentry vehicles, and all reentry vehicles are not RLVs. A reentry vehicle is defined by the Commercial Space Act of 1998 to mean ''a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from outer space to Earth, substantially intact.'' Pub. L. 105–303, Section 102(a)(3). Therefore, an RLV is a reentry vehicle under specific conditions of design and operation. Similarly, ''reentry'' is defined to mean ''to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth.'' Pub. L. 105–303, Section 102(a)(3).

An RLV is a launch vehicle designed to be launched more than once; however its return to Earth would be licensable as a reentry only if the vehicle achieves Earth orbit or outer space. Some RLVs are designed to operate in a suborbital fashion in that they do not enter Earth orbit. Others achieve Earth orbit and remain on orbit anywhere from one orbital revolution to several days prior to initiating reentry, depending on the nature of the mission. Some vehicle concepts employ a fully reusable vehicle that carries the payload to orbit and returns to Earth with the entire vehicle intact. This category of RLV includes single-stage-to-orbit (SSTO) vehicles, such as the VentureStar vehicle planned by Lockheed Martin Corporation (Lockheed Martin) and Rotary Rocket's Roton vehicle. For some, only certain stages, or portions, of the vehicle are designed to reenter . For example, Kistler Aerospace Corporation's (Kistler) K–1 vehicle relies upon a two-stage-to-orbit concept in which both the orbital vehicle and booster vehicle return to Earth for reuse; however only the orbital vehicle would qualify as a reentry vehicle under the statutory definition. An RLV also may be designed with one or more stages that are fully reusable and with other stages that are either partially reusable or even expendable. There are also airborne launch systems under development, such as that proposed by Kelly Aerospace, involving RLV and reentry operations.

Further complicating the development of regulations for commercial space transportation activities is the variety of take-off and landing concepts that have been proposed. These concepts include

vertical launch from conventional launch pads, horizontal take-off from conventional runways, and airborne release using tow or air-drop configurations. Also included are vertical landing, horizontal landing, and a variety of ''soft'' landing concepts, such as parachutes, airbags, parafoils, rotors, water landings, or aerial recovery.

The FAA does not want to constrain the development of emerging technology as operators seek effective and efficient methods of operation. Therefore, the regulatory requirements proposed by the FAA are not, generally speaking, based on type or design of a reentry vehicle or RLV, nor is the FAA proposing to certificate vehicle design. Rather, the FAA is proposing to examine closely those critical systems whose performance or reliability can affect public safety. Except for certain restrictions deemed critical to assuring public safety, the FAA proposes to employ a system safety engineering approach that effectively allows an operator to design its own operational restrictions and performance envelope within permissible risk thresholds established by the agency consistent with safety mandate. Limits and conditions on a licensee's RLV launch and reentry vehicle operations would be determined through the system safety process and risk assessments performed by a license applicant. The FAA envisions that future use of RLV operations may include passenger transport, in addition to cargo transport, to and from space. This notice is not intended to address these issues. Future rulemakings will address crew and passenger safety and other issues.

History of U.S. Commercial Reentry Capability

COMET/METEOR Program

A number of the safety principles reflected in this proposal originate with the experience gained by the Department's Office of Commercial Space Transportation (OCST), the predecessor organization to AST, in evaluating the COMET (Commercial Experiment Transporter) Program and, later, the METEOR (Multiple Experiment to Earth Orbit and Return) Program.

The COMET Program began as a commercial program administered through National Aeronautics and Space Administration (NASA)'s Centers for the Commercial Development of Space (CCDS). COMET was intended to provide the services of a reentry vehicle system to carry and return to Earth experimental payloads. Three reentry missions were originally planned, with an option for two additional missions. The reentry vehicle system was comprised of a service module, manufactured by Westinghouse Electric Corporation, and a capsule-shaped reentry vehicle, manufactured by Space Industries, Inc. Both companies were under contract with NASA's CCDS. The program was intended to demonstrate the capability of a low cost, medium-term (30-day) platform in space for the conduct and return to Earth of microgravity experiments. The COMET Program and the agency's approach to authorizing its activity is fully described in several **Federal Register** Notices . (*See* 57 FR 10213, March 24, 1992; 57 FR 55021, November 23, 1992; and 60 FR 39476, August 2, 1995.) EER Systems Corporation (EER), also under contract to the CCDS, was responsible for launching the COMET reentry vehicle system into space using a Conestoga expendable launch vehicle.

Upon command from Earth, the COMET would separate into two components and the reentry vehicle portion (Freeflyer), designed and operated by Space Industries, Inc., would reenter the Earth's atmosphere targeting a designated landing site on earth where experiments could be recovered. Because of funding problems the COMET Program was terminated and subsequently resurrected under a contract between NASA and Systems, Inc., which became responsible for both launch and reentry operations. Flight capability of the reentry vehicle system, renamed METEOR, was never demonstrated, however, because of the Conestoga launch failure which destroyed the METEOR system shortly after lift-off.

The agency's initial approach to the COMET Program was to license the reentry event separately from the launch event under existing launch licensing authority. The determination to issue a separate license for return to Earth of the reentry vehicle was based, in large measure, on the fact that the reentry vehicle operator was a different entity than the launch operator, and that responsibility over the subsequent reentry (30 days following completion of the launch) ought not be imposed regulatorily on the launch operator, whose responsibility for launch safety would terminate after delivery of COMET to orbit and upon safing of the Conestoga expendable launch vehicle upper stage. Also, under typical circumstances, the launch provider's obligations to its customer would end upon successful deployment of the payload or cargo, in this case the COMET reentry vehicle system. By letter from the Chairman of the House Subcommittee on Space to the Director of OCST, the Department was advised that it did not have explicit licensing authority over payloads but that it should continue its safety review of reentry vehicle operations associated with the Launch. In the letter, dated September 2, 1992, the House Subcommittee Chairman indicated that the Committee would seek legislation to address commercial reentry vehicle licensing issues, including indemnification and liability. OCST continued its evaluation of the COMET reentry vehicle system, and then METEOR, under its authority to evaluate missions and payloads not otherwise licensed by the Federal government, for purposes of assuring whether the launch of the COMET payload would jeopardize public health and safety or safety of property.

The Commercial Space Act of 1998, Pub. L. 105–303, provides reentry licensing authority to the Department and imposes the financial responsibility and risk allocation provisions of 49 U.S.C. 70112 and 70113 on licensed reentries. (Financial responsibility issues associated with licensed reentry activities are discussed in a separate rulemaking.)

COMET/METEOR Safety Approval

The COMET Program safety review evaluated safety aspects of the reentry vehicle system when operated in accordance with certain operating limits. The review encompassed vehicle design, engineering analyses, testing, manufacturing, and integration. A vehicle safety evaluation determined the performance capabilities and limitations of the integrated reentry vehicle system. OCST did not dictate the methodology to be used by the applicant in performing the hazard and risk assessment required for vehicle safety approval; however, the applicant had to address engineering and safety analyses, component and system tests and checkouts, quality assurance procedures, manufacturing processes, and test plans and results. A separate operations review evaluated the operator's ability to carry out the reentry operation in a safe manner consistent with the capability and limitations of the reentry vehicle system. Vehicle safety and operations approvals issued by OCST were limited to the design and operating limits presented in the respective applications. Any subsequent changes would require an amendment of the application and further review and approval by the agency.

For further assurance of public safety, OCST determined it prudent to conduct

independent evaluations of the reliability, design performance, and operation of the COMET reentry vehicle system in addition to assessing the data submitted by Space Industries, Inc., and later by EER, to support the application for vehicle safety approval. These independent evaluations were designed to serve as a means of ensuring all hazards had been identified and the applicant had adequately addressed all potential risks. The evaluation also provided technical verification of the applicant's analysis of the reliability of the reentry vehicle system.

COMET/METEOR Safety Approval Criteria

The COMET Program was the first commercial reentry operation that proposed to land a reentry vehicle in the United States. The designated landing site for the reentry vehicle was the Utah Test and Training Range, a Federal facility located in a sparsely populated area.

In fulfilling its statutory mandate to protect public safety, OCST selected three criteria against which the reentry vehicle system would be evaluated. The evaluation criteria were performance-based rather than design standards to afford the COMET Program participants maximum flexibility in developing a safe and cost-effective product. As a general matter, performance-based standards also further the public interest by encouraging innovation and technology development. The three criteria developed by OCST to evaluate the COMET Program reentry vehicle system were as follows:

1. The probability of the Reentry Vehicle (RV) landing outside the designated landing site shall not be greater than 3 in 1,000 missions.

2. The additional risks to the public in the immediate vicinity of the landing site (that is, the area within 100 miles of the designated landing site) shall not exceed the normal background risks to which those individuals ordinarily would be exposed but for the reentry missions. Normal background risk is characterized as: the probability of any casualty occurring within the 100-mile zone shall not exceed one in a million on an annual basis. In addition, the probability of any casualty occurring within the zone shall not exceed one in a million for a single mission.

3. The additional risks to the general public beyond the 100-mile zone around the designed landing site, and to property on orbit, shall not exceed normal background risks to which the public ordinarily would be exposed but for the reentry missions. This normal background risk is characterized as: the probability of any casualty occurring shall not exceed one in a million on an annual basis. In addition, the probability of any casualty occurring in the area that is both outside the designated landing site and the 100-mile zone around the site shall not exceed one in a million for a single mission.

The three criteria, established an acceptable level of risk that conservatively, did not exceed the normal background risk of individuals affected by the activity. The criteria were published in the **Federal Register** on March 24, 1992 (57 FR 10213).

As explained in the March 24, 1992 Notice, the first criterion was directed at ensuring vehicle reliability and accuracy within a controlled area. The second criterion was intended to ensure that as a result of nominal operations, or in the event of a system error or deviation from planned trajectory of the vehicle, persons living within the vicinity of the landing site were not exposed to greater than the normal background risk that is accepted by the public in daily activities. The third criterion would limit public risk to normal background risk even if a major system failure resulted in an essentially random reentry; however, flight path, design, and limited cross-range capability of the vehicle made it possible to define the potential ''footprint'' in which a random reentry could occur.

Believing that it could not satisfy the first criterion in the absence of flight performance history, Space Industries, Inc. petitioned for relief from the accuracy and reliability criterion. The program was discontinued in May 1994, before official action could be taken on the waiver request. Approximately one year later, NASA restarted the program, renamed METEOR by EER, which took over responsibility for development and operation of the reentry vehicle system in addition to launch of the METEOR, on its Conestoga launch vehicle. However, unlike the COMET Program, NASA contracted for reentry services and designated an area in the Atlantic Ocean, off the coast of Virginia, for the program's initial reentry attempt. Changing the landing site from Utah to the Atlantic Ocean significantly reduced the public's exposure to risk if the vehicle were to land off-site as a result of a system failure. While analysis showed that the properly operating reentry vehicle would land within the designated landing area in 997 out of 1,000 nominal cases, Systems Corporation argued that it could not demonstrate that the vehicle met the criterion in non-nominal cases. Non-nominal cases were those that considered the probability of failure of certain safety critical systems and the resultant errors in the landing location. Therefore, EER pursued the requested relief from the accuracy and reliability criterion.

OCST granted the requested waiver for the following reasons: OCST determined that the three criteria were designed to collectively ensure public safety, meaning that satisfaction of the second and third criteria would compensate if the ability of the reentry vehicle system to meet the accuracy and reliability criterion was marginal. OCST analyzed failure scenarios and determined that there were circumstances in which intentional reentry of the METEOR reentry vehicle could occur and public safety would be assured without the demonstrated level of accuracy required under the first criterion. Those circumstances were as follows: (i) if there were well-defined areas within which the vehicle was most likely to land if it missed the designated landing site, and the risk to the population within those areas fell within acceptable limits; (ii) if the condition of the vehicle following an errant reentry presented little risk to exposed populations because it would not survive reentry or because of its small size and mass and the absence of hazardous materials on the vehicle; and (iii) if risk mitigation measures could be implemented to limit public safety risk to acceptable levels. Because all of these circumstances were found to exist, and because criteria two and three were satisfied, OCST concluded that public safety and U.S. national interests would not be jeopardized if criterion one were not satisfied for non-nominal cases. A waiver of the accuracy and reliability criterion was therefore granted for the METEOR Program's first reentry. However, as a condition of the waiver, OCST required that the operator implement a public information communications plan under which the affected public would be informed of the reentry activity, including its estimated time and location. The operator also was required to have an emergency response plan whereby local officials would be notified in the event of an off-site landing.

The launch vehicle failed shortly after lift-off during first stage powered ascent and the vehicle and payload were destroyed. No subsequent application for a launch license or payload determination has been made under the COMET/METEOR Program and, as yet, no formal application has been submitted to the FAA to reenter a reentry vehicle.

Lessons Learned From COMET/METEOR Safety Approval Criteria

The FAA concludes that a collective approach of using a number of safety standards, in combination, to limit risk is in the public interest. Accordingly, the FAA is proposing a three-prong interrelated approach to achieving safe reentry operations, in addition to requiring certain organizational safeguards derived from the government's experience in managing safe launch operations. First, the performance hazards and risks to public safety presented by a reentry vehicle proposal would be identified through a system safety process that defines the safe operating envelope for a particular reentry vehicle, much like the vehicle safety approval process utilized for evaluating the COMET reentry vehicle system. Second, an applicant for a reentry license would be required to satisfy a collective risk criteria, referred to as E_c. Third, as in COMET, the FAA is proposing certain risk mitigation measures that must be followed even if other standards are satisfied. These measures take the form of operational restrictions and are described below.

The FAA proposes that the reentry site must be sufficiently large so as to encompass the three-sigma footprint of the vehicle, as explained in greater detail in a subsequent section elsewhere in this notice under supplementary information. This articulation of the landing site accuracy standard effectively limits the risk of an off-site landing but does so in a way that is more readily demonstrable by an applicant, as it relates only to nominal performance of the vehicle and its systems.

General Approach to Reusable Launch Vehicle and Reentry Licensing

Purposeful Reentry From Earth Orbit or Outer Space

Prior to enactment of the Commercial Space Act of 1998 (CSA), FAA licensing authority over launch vehicle flight was limited to launches of launch vehicles, defined to mean to place or try to place a launch vehicle and any payload in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space. 49 U.S.C. 70102(3). A ''launch vehicle'' is defined in 49 U.S.C. 70102 to mean a vehicle built to operate in, or place a payload in, outer space, and a suborbital rocket. 49 U.S.C. 70102(7).

Recent amendment of 49 U.S.C. Subtitle IX, chapter 701, grants to the agency explicit licensing authority over reentry operations. ''Reentry,'' an event that must be authorized by the FAA, means the ''return or attempt to return, purposefully, [of] a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth.'' 49 U.S.C. 70102(10). Two elements must be satisfied for an event to qualify as a ''reentry'' subject to FAA licensing jurisdiction. First, the vehicle (an undefined term) that is being returned to Earth must qualify as a ''reentry vehicle'' under the statutory definition. That is, not only must its reentry originate from Earth orbit or outer space, but the vehicle must be designed to reenter and land on Earth in substantially intact condition. Second, deliberate intent to reenter, or the element of purposefulness, must exist. Absent these two elements, the unintended, though foreseeable, return to Earth of an object capable of surviving reentry is not an event that requires licensing by the FAA.

For example, the return to Earth in 1997 of a major part of a Delta II launch vehicle, a second stage tank, in substantially intact condition in a Texas field was foreseeable inasmuch as any object in orbit, and most immediately in low Earth orbit, will experience the effects of orbital decay over time and eventually reenter Earth atmosphere. Most such objects will burn up upon reentry into Earth atmosphere due to aerodynamic heating caused by atmospheric drag. The Delta II second stage tank is notorious because it failed to do so, however it would not require FAA licensing. The event illustrates that an object that is not intended to survive reentry substantially intact may in fact do so. The Delta II second stage is not a reentry vehicle under the statutory definition because it was not designed to survive reentry. However, even if it were a reentry vehicle, the event would not be subject to FAA licensing jurisdiction because there was never any deliberate intent by an operator to return the Delta II second stage to Earth, even though it was understood that the Delta stage, just like any other space object, would eventually reenter Earth atmosphere as a function of orbital decay.

Certain RLV launch concepts operate in a suborbital [1] fashion in that they do not achieve orbital velocity. However, until passage of the CSA, it remained doubtful (or at best unclear) as to whether Congress intended for the FAA to impose regulatory controls over the intact landing of such vehicles returning from outer space and whether financial responsibility and risk allocation requirements, specifically the so-called indemnification provisions of 49 U.S.C. 70113, would apply to their landing on Earth. The matter is now resolved by legislation and, to ensure consistency in its regulatory approach to assessing and limiting risk to public safety, the FAA considers a suborbitally operated RLV the same as other reentry vehicles that return from Earth orbit or outer space. From a safety and risk standpoint, the difference between a suborbital reentry and an orbital one is a distinction without a difference, in the agency's opinion, because both pose comparable risks to public safety as a result of launch or ascent of the vehicle and intact descent or reentry of the vehicle. To ensure consistent application of standards in evaluating ascent and descent risks presented by RLV proposals, the FAA has determined that the better approach is to regard a suborbitally operated RLV as the launch and reentry of a reentry vehicle, rather than as a suborbital launch of a launch vehicle. As explained in the next section of this supplementary information, because the FAA would evaluate the safety of the entire mission, regardless of whether one authorization (launch) or two (launch and reentry) are combined in a single instrument known as a license, consistency in the agency's approach to risk assessment is assured.

The FAA concludes that a suborbitally operated RLV that achieves outer space would satisfy the requisite element of purposefulness and would thus be subject to FAA reentry licensing authority, even though an intervening event of human control over vehicle operations is not required to return that vehicle to Earth. The term ''purposefully'' that appears in the definition of ''reenter'' and ''reentry'' is intended to include within the FAA's reentry licensing authority those vehicles whose return to Earth must be deliberately initiated by human or pre-programmed intervention, as well as those vehicles for which intentional reentry has been designed into the vehicle's capability without initiation of a reentry sequence, as is the case in a ballistic launch and reentry where there is no need to activate a reentry propulsion system. The term ''purposeful'' is, however, intended to eliminate from the scope of FAA licensing jurisdiction those spacecraft that are not designed to, but may, survive reentry into Earth atmosphere through application of natural deorbiting forces, such as orbital decay.

[1] The dictionary definition of the term ''suborbital'' means of or less than one orbit of the earth. A suborbital trajectory is a flight path that is not closed, whereas an orbit is a closed path. A suborbital trajectory may be ballistic, that is, acted on only by atmospheric drag and gravity, or it can be controlled by external forces and therefore maneuverable.

Where the operator's intent, as evidenced through vehicle design and operation, is to launch and deliberately return to Earth the RLV, and the vehicle is designed to return from outer space to Earth substantially intact, the return to Earth is licensable as a ''reentry.'' Thus, suborbitally operated RLVs that reach outer space are reentry vehicles whose reentry would be subject to FAA reentry licensing authority.

As previously indicated, not all RLVs will satisfy the statutory definition of the term ''reenter'' because they do not achieve Earth orbit or outer space. However, RLVs and reentry vehicles share the common operational characteristic of intact, targeted reentry and it is this operational characteristic that presents risks to public safety warranting regulatory oversight. It is also this operational characteristic that heightens the risk of U.S. Government international liability under the Outer Space Treaties and therefore warrants regulatory supervision by the United States to ensure that reentry activities are conducted in a manner consistent with international obligations of the United States.

Therefore, whether or not an RLV is also a reentry vehicle specifically subject to reentry licensing jurisdiction of the agency, the FAA is proposing a consistent measure of safety for ascent and descent flight phases of an RLV. The measure of safety would not vary on the basis of whether an RLV's flight and return to Earth meet the statutory definition of a ''reentry.'' In other words, the public should not be exposed to greater risk because a vehicle achieves Earth orbit or outer space, or is maneuvered in its return to Earth rather than returning through ballistic flight. However, where reentry must be deliberately initiated for de-orbit to occur, certain affirmative controls or safety standards, as described under a separate heading elsewhere in this supplementary information, would be imposed on the operator to ensure conditions for safe reentry are satisfied.

Mission Risk Assessment

For all RLVs and most reentry vehicles, the FAA proposes to approach safety on an overall mission basis. The FAA would evaluate the safety of the ascent and descent phases of an RLV mission and would not allow it to proceed unless the combined risk of the ascent and descent phases of the mission satisfies the agency's safety criteria. That criteria is: $E_c \leq 30 \times 10^{-6}$. For risk assessment purposes, the FAA proposes no distinction among space launch vehicles that combine expendable and reusable vehicle concepts, or that reenter in multiple stages (some or all of which may also be reentry vehicles). A single safety criteria, measured in terms of expected casualty for the mission, would apply to all public risk exposure from vehicle operations during both ascent and descent. Thus, a launch vehicle that utilizes an expendable first stage booster to achieve altitude and a second reusable stage for delivery on orbit followed by reentry would be required to satisfy the single E_c criterion cited above for the FAA to authorize the mission (launch and reentry).

The FAA believes a caveat may be appropriate with respect to the appropriate public safety risk threshold to apply to a reentry vehicle that is designed to remain on orbit for an extended period of time and for which planned reentry is so remote from the launch event that there is no objective means or rational basis for combining reentry risk with launch or ascent risk. The FAA requests public comment on the circumstances, if any, under which it may be appropriate to separately assess the reentry risks of a reentry vehicle from those presented by the entire mission of launching a reentry vehicle into space and its subsequent reentry.

That said, the FAA envisions combining launch and reentry authorizations under a single license whereby a single operator is responsible for launch and reentry phases of the mission.[2] The FAA would not use a ''wait and see'' approach to authorize a reentry. Reentry authorization would have to be issued in advance of launch, signifying the FAA's conclusion that both ascent and descent flight phases could be performed in a manner that does not expose the public to unreasonable risk.

Scope of License

The report of the House Committee on Science, Report 105–347, addresses the intended scope of licensing authority over reentry operations granted to the FAA by H.R. 1702, the Commercial Space Act of 1997. (The Commercial Space Act of 1998 was enacted into law during the second session of the 105th Congress as Public Law 105–303. No substantive changes to FAA reentry licensing authority from that reported on by the House Science Committee in Report 105–347 appear in the public law.) It provides that the legislation is not intended to extend FAA launch licensing authority, as far as the payload is concerned, beyond placement of the payload in orbit or its planned trajectory. According to the Committee Report, only the launch of a launch vehicle and reentry of a reentry vehicle requires FAA licensing and regulatory oversight. While non-reentry vehicle operations on-orbit, maneuvers between orbits, and activities following launch that also precede reentry are not intended to be covered by an FAA license, the Committee Report recognized that the FAA may need to examine pre-reentry procedures and activities to evaluate safe reentry capability.

A discussion of launch duration and the commencement point of a reentry license appears in a separate rulemaking that addresses financial responsibility and risk allocation for licensed reentry activities so that space vehicle operators can manage risks appropriately. Unlicensed events would only be eligible for government payment of excess claims protection, known as indemnification, to the extent losses result from and are causally related to a licensed activity. Therefore, for purposes of insurance and indemnification under 49 U.S.C. 70112 and 70113, it is critical that the FAA define those activities to which statutory-based insurance and risk allocation would be applicable. For purposes of licensing, it is also important that the agency define the extent of activity that is covered by a license and is therefore subject to FAA safety standards.

In determining the appropriate scope of a reentry license, the FAA considered the Committee Report language cited above, the scope of launch licenses for ELV launches, and reentry risks for which statutorily mandated financial responsibility and risk allocation are necessary.

In its report accompanying H.R. 1702, the House Committee on Science stated that ''[b]y way of definition, the Committee intends that [''reentry''] begins when the vehicle is prepared specifically for reentry. By way of definition, the Committee intends the term to apply to that phase of the overall space mission during which the reentry is intentionally initiated. Although this may vary slightly from system to system, as a general matter the Committee expects reentry to begin when the vehicle's attitude is oriented for propulsion firing to place the vehicle on its reentry trajectory.'' (Report 105–347 at p. 21, 105th Cong., 1st Sess.)

The Report acknowledges that to evaluate capability of a reentry operator to conduct a safe reentry, the agency

[2] Separate licenses would be appropriate in circumstances where different operators are each responsible for a particular phase of flight, as originally planned in the COMET Program.

may need to examine certain proposed procedures and activities that would precede initiation of reentry; however, these procedures and activities are not events requiring a license or otherwise subject to regulations. ''Rather, they would represent aspects of an application that the Department would have to measure against standards and criteria that the Department has established are necessary to evaluate capability to conduct the reentry.'' The Committee further allows for both general and particular (case-by-case) applicability of such standards and criteria to a reentry proposal.

The FAA proposes regulations adopting the analytical approach to assessing reentry capability envisioned by the House Science Committee. The FAA is not proposing design-based or prescriptive requirements applicable to RLV or reentry vehicle activities while on orbit. As described below, the agency's system safety approach to reentry risk requires that a reentry operator establish operating procedures and specifications that ensure reentry risks are confined within acceptable limits. Reentry authorization would be granted based on a demonstration by an applicant that its vehicle and reentry operations satisfy the agency's safety criteria when operated in accordance with operator-designed procedures and criteria.

For purposes of measuring reentry safety against FAA criteria (E_c), however, it remains necessary to define the extent of activities that enter into the E_c analysis. Most of the RLV and reentry activities currently contemplated by the aerospace industry involve very limited time on orbit. RLVs that operate suborbitally, as discussed above, would spend no time on orbit and would be subject to continuous FAA licensing. Unlike the COMET situation, RLVs that are reentry vehicles are not payloads for purposes of launch. Rather, they are both a launch and reentry vehicle.

Except for extended microgravity experimentation, such as that contemplated by the COMET Program, regulation of on orbit activity of orbital reentry vehicles would be limited to that necessary to ensure reentry readiness, capability and safe return to a designated destination. Because additional time on orbit would raise costs and otherwise interfere with RLV objectives of prompt delivery and return services, the FAA envisions that the only on orbit time spent by an orbital reentry vehicle would be that required to assure reentry-readiness through reentry safety-critical system check-out and attitude and orientation adjustment for return to the reentry site. Because a non-nominal reentry could occur as a result of or during reentry-readiness activity following a vehicle's ascent to orbit, the agency concludes that such activities must necessarily be covered by a license in order to assure public safety. As discussed in a separate rulemaking on reentry financial responsibility, licensing reentry-readiness activity is also critical to a meaningful risk management scheme under 49 U.S.C. 70112 and 70113.

Accordingly, the FAA proposes to define reentry and the scope of a reentry license in a manner similar to that utilized for launch licensing. The term ''launch'' is characterized in the House Science Committee Report as including activities that precede flight that entail critical preparatory steps to initiating flight, are unique to space launch and are so hazardous as to warrant agency regulatory oversight, as long as they are conducted at a launch site in the United States, even if that site is not ultimately the site of the actual launch. (Report 105–347 at p. 22, 105th Cong., 1st Sess.) The FAA finds in this report language helpful guidance in attempting to delimit ''that phase of the overall space mission during which the reentry is intentionally initiated.'' Just as pre-flight launch activities must be licensed because, among other things, they are critical and particular to the launch process, the reentry phase may be defined as encompassing those vehicle operations necessary to assure reentry readiness and safety that are uniquely associated with the purpose and performance of the reentry mission.

The FAA also considered the point in time when licensing authority over a launch is concluded in an effort to define the point after launch when an authorized reentry may commence for licensing purposes. In a separate rulemaking governing licensing requirements for launches from Federal ranges, the FAA defines the end of licensed activity, for purposes of the launch vehicle, as the point after payload separation when the last action occurs over which a licensee has direct or indirect control over the launch vehicle. Typically, this point occurs when the vehicle's upper stage is rendered inert or safe from explosive risk. Currently, licensed launches from Federal ranges are exclusively launches of expendable launch vehicles (ELVs), and the licensing rule definition of the end of licensed launch activity is directed, quite properly, to ELV launches. If applied to RLV technology, however, a launch might not be concluded under the terms of this definition until reentry is complete because the RLV operator would retain (or design in) certain control over the vehicle in order to ready it for reentry. Because separate licensing authority over launch and reentry is granted to the agency by the amended statute, the FAA believes that the defined end of licensed launch activity for an ELV may not be appropriate in defining the end of licensed launch activity for an RLV. However, that portion of the definition that addresses payload delivery is instructive in defining the end of the launch phase of an RLV mission that involves both a launch and reentry. In fact, the Committee focuses on payload delivery in defining the end of launch under the original intent of the CSLA. ''The original Act intended that a launch ends, as far as the payload is concerned, once the launch vehicle places the payload in Earth orbit or in the planned trajectory in outer space.'' (House Science Committee Report 105–347, at p. 22.)

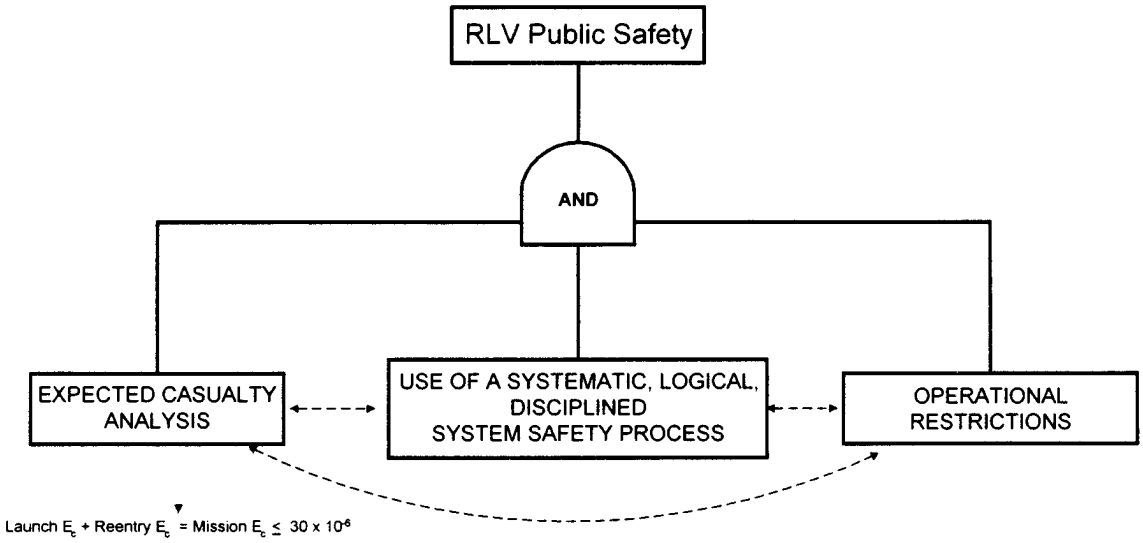
The Committee report language employs terms that describe the appropriate end of a licensed launch of a reentry vehicle when the reentry vehicle itself is a payload, as was the case in the COMET/METEOR experience, in an effort to ensure the FAA does not bootstrap licensing authority over payloads. If the COMET or METEOR vehicle were presented today for licensing, the end of launch would properly be defined as placement of the payload, the COMET or METEOR reentry vehicle, in Earth orbit or its planned trajectory, and safing of the ELV upper stage used to launch the reentry vehicle (payload) to orbit, consistent with FAA licensing rules and Committee report language. During the 30-day period following launch and preceding planned reentry, the COMET/METEOR payload would not be subject to FAA licensing, just as any other payload operating on orbit is not subject to FAA licensing. However, the intentional reentry to Earth of the COMET/METEOR reentry vehicle from Earth orbit would require FAA licensing because it was designed to return to Earth substantially intact.

Reusable launch vehicles that are also reentry vehicles present a different situation from COMET/METEOR in that RLV operations on orbit are not payload operations. Based on pre-application consultations with RLV developers, the FAA understands that RLV operations on orbit following payload deployment would be those conducted generally for the purpose of assuring reentry readiness, such as safety system checkouts, vehicle orientation for the targeted landing site, and attitude control and adjustment prior to initiating a deorbit burn or other reentry

sequence necessary for the intended return to Earth. Accordingly, the FAA defines the end of licensed launch activity for an RLV launch at deployment of a payload. The licensed reentry phase of a mission begins immediately thereafter for vehicles that are intended to reenter when reentry-readiness is verified. In other circumstances, such as a planned or designed-in delay of reentry for an extended duration the FAA requests comments on the appropriate point for commencing reentry licensing authority.

Public Safety Strategy for Assessing Reusable Launch Vehicle and Reentry Safety

This proposal reflects a three-pronged approach to assuring that risks to public safety are maintained at or below acceptable levels during an RLV mission and any licensed reentry. The three prongs, which are interrelated, are: (1) utilization by an applicant of a systematic, logical and disciplined system safety process; (2) an analysis that determines the expected casualty rate per mission; and (3) mandatory operational restrictions imposed by regulation for risk mitigation purposes. No single one of these processes is sufficient by itself to ensure that a reentry operation would not jeopardize public safety. The FAA believes that the combination of these elements will be effective in limiting public risk. The following chart demonstrates the interrelationship of the three elements of the agency's public safety strategy:



The first two elements are applied on a case-by-case, or individual, basis because the factors that comprise the necessary analyses are uniquely dependent on vehicle capability, design and intended operation. Mandatory operational restrictions would be specified in rules of general applicability.

Assessment of expected casualties is a commonly used measure of launch risk within the aerospace community. The FAA proposes to measure collective risk, defined as the product of the probability (or frequency) of occurrence of all events and the severity of each events impact or consequences on public safety. A quantitative number is derived through analytic techniques in lieu of empirical launch data, because the actual number of launches of a particular type of launch vehicle is too small to be statistically significant. Presented below is the agency's proposed measure of acceptable casualty risk.

Applicants will be required to utilize a system safety process. In some respects, this is similar to the FAA systems approach to examining aviation systems such as that contained in 14 CFR 25.1309. This process lays the foundation for the system safety engineering effort used in designing a vehicle and therefore the FAA believes the requirement would impose no additional burden on an applicant. A system safety process employs methods and techniques that may be utilized for identifying: (i) the hazards that result from a particular launch or reentry vehicle operation, (ii) the effects on or consequences to public safety of those hazards including vehicle failure, (iii) means of controlling or mitigating those consequences, and (iv) verification processes of the effectiveness of risk mitigation measures. Part of a system safety process is the application of techniques and tools to determine failure probabilities and to estimate the consequences of such failures, which in turn informs calculation of the expected casualty rate. Thus, the two analyses are interrelated. Through a system safety process, an applicant develops operational constraints and defines the operating envelope that will ensure its mission does not exceed acceptable risk thresholds .

The FAA does not propose to define acceptable system safety processes as a regulatory matter; however, the process selected must be adequate to accomplish its intended purpose. The FAA will issue guidance material describing an acceptable system safety process and its elements as a means of compliance with regulations. The FAA will also issue guidance on acceptable methodology for calculating expected casualty risk. The FAA believes applying a flexible approach of this nature to assessing risk to public safety is particularly critical at this early stage of RLV and reentry technology development to accommodate, and encourage, the varied operational and design concepts envisioned within the industry.

Calculation of casualty expectancy and system safety process analyses are analytical tools. Absent operational proof of vehicle reliability, the FAA believes that additional constraints on operations are also necessary to assure public safety until sufficient flight data is available to validate analytical demonstrations. The FAA is proposing to impose certain operational

restrictions on all RLV missions and reentries, and additional restrictions for unproven vehicles. The FAA will relieve or waive restrictions once sufficient performance data is available to support an agency determination that public safety is assured without their imposition.

1. Calculation of E_c (Acceptable public risk)

Although risk is inherent in the operation of an RLV or reentry vehicle, this proposal would establish limits on the risk to public safety that may result from licensed flight of an RLV or reentry vehicle. Risk analysis has been widely used to support regulatory and industrial decision-making and to allocate limited resources. The Nuclear Regulatory Commission and the Department of Energy, for example, have made extensive use of risk analysis in analyzing, licensing, and regulating the operation of nuclear power plants; prioritizing nuclear waste disposal safety issues; and performing environmental impact analyses. The Department of Defense (DOD) also has used risk analysis to develop and test nuclear weapons systems.

In the space launch arena, risk analysis is used to evaluate the hazards and consequences associated with a launch. One measure of acceptable flight risk used to determine whether a launch can proceed at a Federal launch range is calculation of the expected number of casualties (E_c) to the collective members of the public exposed to debris hazards from a particular launch. A casualty includes serious injury as well as death. E_c provides the advantage of a mathematically defined criterion on which to evaluate an event, such as a launch or reentry, without the necessity of completing detailed vehicle design analyses. The term ''public'' for purposes of E_c calculation means all persons who do not participate in the operation of the vehicle, hence, the term ''public'' would not include the crew on a manned vehicle.

Federal range safety requirements developed over the last 40 years safeguard the public by limiting the public's exposure to the risks associated with launch activities. Because of operator adherence to Federal range safety requirements and practices, the public has not suffered any casualty from launches of ELVs. Therefore, it has not been necessary for the FAA to independently evaluate the design or manufacture of vehicles and duplicate the evaluation process undertaken when a vehicle is launched from a Federal range. The FAA has adopted the Federal range E_c standard of 0.00003 casualties per launch or $E_c \leq 30 \times 10^{-6}$ in its licensing regulations and will license launches from non-Federal launch sites if equivalent safety is demonstrated. The FAA proposes to apply the same approach to evaluate RLV and reentry risks on a per mission basis.

There are two fundamental components of E_c analysis: (1) determination of the probability of a failure event (p_i), and (2) evaluation of the consequence of the failure event (C_i). The complete equation for E_c is the sum, over all possible failure events, of the product of the p_i and C_i as follows:

$$E_c = \sum_{i=1}^{n} (p_i \times c_i)$$

where ''i'' is a failure event and where there are ''n'' failure events that could result in a non-zero consequence.

The probability of a failure event is always a fraction between 0 and 1, while the measure of the consequence of the failure event could be any number. The larger the number, the greater the risk. Reducing the probability of the failure event could lower the risk. Because the probability of a failure event is related directly to the reliability of a vehicle's safety critical systems and subsystems, having a very reliable vehicle could lower the risk. (Whether a system is safety critical such that a failure of the system might affect public safety would depend on a number of factors, including vehicle flight path and its capability to reach populated areas.)

Lowering the consequence of the failure event also could reduce the risk. The consequence of the failure event is calculated by multiplying the surface area population density by the casualty area of the vehicle. This calculation would have to be made using the casualty area produced by an intact vehicle or the casualty area created by the debris fragments produced by a vehicle that has broken up in midair. The worst-case scenario should be used. The casualty area of the vehicle would consider the potential for casualties related to secondary explosions, hazardous material exposure, collateral damage, and the lateral movement of debris after impact. From the equation it can be deduced that E_c could be lowered by operating the vehicle so that a failure event causes few or fewer casualties. (ELVs generally have a small E_c because planned flight paths are over unpopulated areas, such as the ocean, and a destructive flight termination system (FTS) would be used to destroy the vehicle if it deviates from its planned flight path.)

The basic elements for determining mission risk are discussed above; however, the real-world process for determining mission risk is a bit more complicated. The process must account for a large number of possible events, and there are likely to be many different failure modes that could affect the characteristics (e.g., size, location) of the debris and lethal area. Fortunately, the goal in conducting a risk analysis to determine E_c for a particular mission is not to determine the actual risk but to determine that the risk is below a certain threshold E_c of 30×10^{-6}. The FAA believes that E_c calculations are best made using conservative estimates and worst-case assumptions to identify and limit the public's risk exposure for improbable hazardous events with high consequences.

Recognizing that Congress has chosen to accept the risk of RLV operations and reentry to derive the benefits from evolving commercial technology, the FAA considered whether to separately assess launch risk from reentry risk and, if so, whether a different risk threshold should be used for launch as opposed to reentry. This proposal reflects the FAA's opinion that a single consistent standard for measuring acceptable public risk should be applied, and that it should apply on a per mission basis.

The FAA has met with representatives of the space transportation industry in pre-application consultation on RLV proposals and to provide licensing guidance. On May 13, 1998, the FAA met with representatives of each RLV developer then known to the agency to discuss RLV and reentry safety assessment issues and to gather information from industry members who have begun to develop commercial RLVs and reentry vehicles. A summary of the meeting has been added to the docket for this proposal. Information obtained by the FAA indicates that a reentry accident may be comparatively less hazardous than a launch accident, a risk generally accepted by the public. A reentry accident could pose less of a risk than a launch accident because a reentry vehicle could carry substantially less propellant, if any, than a launch vehicle and could therefore pose less of an explosive or fire hazard under some circumstances. If this is so, it also could be expected that the E_c for the reentry of a vehicle of a particular design would be significantly less than the E_c for the launch of that same vehicle over any area of the same population density.

On February 11, 1999, the FAA held a public meeting to discuss draft interim safety guidance concerning RLV operations and to gather information from industry representatives who are

developing commercial RLVs. The draft interim safety guidance, issued in advance of rulemaking proceedings, was prepared to assist prospective reentry license applicants in understanding the nature of the agency's public safety concerns when evaluating proposed RLV operations. A transcript of comments made at the public meeting have been added to the docket inasmuch as they may also address aspects of the agency's proposed regulatory approach to regulating safety of RLV and reentry operations. Written comments are also placed in the docket.

In light of this information, the FAA considered whether a single E_c risk threshold should be applied to the mission as a whole or separately to each segment of the mission (launch and reentry). If it is assumed that a vehicle will operate at the absolute extreme allowed by the risk threshold, employing separate risk thresholds at the level currently tolerated for launch would make the total maximum risk exposure for an entire RLV mission nearly equal to 60×10^{-6} (30×10^{-6} for launch plus 30×10^{-6} for reentry, assuming independent events). The effect of using separate, independently applied standards would be to effectively nearly double the acceptable maximum risk exposure imposed on the public for an RLV mission in comparison to the public's risk from the launch of an expendable launch vehicle launching the same payload. (Note that applying separate risk thresholds for launch and reentry would result in an increased risk threshold for the mission if the aggregate risk allowed (launch E_c + reentry E_c) were greater than 30×10^{-6}.)

Next, the FAA considered the appropriate risk threshold to use in assessing risk on a per-mission basis if a single E_c value is applied to the mission, that is, whether the level of acceptable risk should be increased in the interest of technology advancement.

Currently, the FAA's practice in evaluating the collective risks associated with a launch is to ensure that E_c is not greater than 30×10^{-6}. This value was derived from launch risk guidance employed by the U.S. Air Force at Cape Canaveral Air Station and Vandenberg Air Force Base to define acceptable risk. ''Eastern and Western Range 127–1 Range Safety Requirements,'' Section 1.4 (October 31, 1995). Since the beginning of the U.S. space program, the public has not suffered any serious injuries or fatalities as a result of a Government or commercial launch under this standard. Expected risks from eventual reentry of ELV stages due to orbital decay is relatively small because most are believed to burn up on reentry. While some components of the stages have been found to have survived, empirical data seems to support this conclusion.

In fostering the nation's space launch capability, the government understands that some risk to public safety shall be endured for the national interest and economic well-being of the United States. And, the public accepts the very limited risks to which it is exposed, as evidenced by population growth in the vicinity of Federal launch sites. However, the FAA is reticent to impose greater risk on the public than that currently accepted for ELV launches in order to accomplish the comparable launch mission of placing payloads on orbit, but at reduced costs. Accordingly, the FAA proposes to continue use of the Federal range risk standard of $E_c \leq 30 \times 10^{-6}$ on a per mission basis for RLV and other launch and reentry missions. Nevertheless, the FAA acknowledges that there may be circumstances under which it would be appropriate to separate launch from reentry risk, such as where different operators are involved and may be apportioned allowable risk thresholds, or where intervening events or time make reentry risks sufficiently independent of launch risks as to warrant separate consideration.

2. System Safety Process and Risk Analysis

As part of the system safety process and risk analysis, an applicant would be required to determine the probability and consequences of events that may affect public safety. Doing so requires population data, vehicle casualty areas, and vehicle failure modes and rates. Accurate population data generally are available and casualty areas could be estimated using accepted industry practices. However, development of vehicle failure rate is more complicated.

Failure modes and rates for a vehicle are related to the failure modes and rates of its major systems, which in turn correlate to the failure modes and rates of major subsystems of a vehicle. To obtain a conservative risk assessment of a vehicle lacking an adequate flight history, an applicant could conduct a risk analysis and assume the probability of a catastrophic failure of 1.0. In the alternative, an applicant would have to complete a detailed risk analysis. This risk analysis would be similar to a traditional systems safety analysis used by DOD and NASA; however, it would not focus on mission success *per se*. However, while experience shows that such analyses are helpful, they are subject to error because of ''unknowns'' for unproven vehicles. Instead, it would focus solely on identifying and evaluating failure modes and rates affecting risks to public health and safety and the safety of property by conducting an evaluation of vehicle systems and proposed operations.

Because of the variety of RLV and reentry vehicle designs and operational concepts, the FAA has not enumerated a specific evaluation methodology. Examples of acceptable techniques for determining failure conditions include, but are not limited to, the following: Preliminary Hazards Analysis, Failure Mode and Effect Analysis, Failure Mode Effect and Criticality Analysis, Fault Hazard Analysis, Event Tree Analysis, Double Failure Matrix, Hazard and Operability Analysis or Operability Hazard Analysis, and Fault Tree Analysis Methodology for Hazard Assessment. An applicant would use the evaluation methodology most appropriate for the system being evaluated. A separate analysis needn't be performed for each flight of a launch vehicle. If a previously approved mission utilized a risk assessment for a similar mission with a substantially similar vehicle, the earlier risk assessment may serve as the basis of a comparative analysis for the proposed mission.

Potential risks identified in the analysis must be mitigated to protect public health and safety and the safety of property. The process of evaluating and mitigating the potential risk of a vehicle or operation would continue until all risks are mitigated to an acceptable level. In the aviation industry, typical hazard control and risk mitigation includes the following:

- Design integrity and quality, including life limits, to ensure intended function and prevent failures;
- Proven reliability of systems so that multiple, independent failures are unlikely to occur during the same flight;
- Capability to check a component's condition;
- Failure warning or indication to provide failure detection;
- Isolation of systems, components, and elements so the failure of one does not cause the failure of another;
- Redundancy or backup systems to enable continued function after any failure;
- Design failure effect limits, including the capability to sustain damage and to limit the safety impact or effects of a failure;
- Design failure path to control and direct the effects of a failure in a way that limits its safety impact;

- Margins or factors of safety to allow for any undefined or unforeseeable adverse conditions;
- Error tolerance that considers adverse effects of foreseeable errors during the vehicle's design, test, manufacture, operation, and maintenance;
- Computer software verification, validation, documentation, configuration management, and quality assurance;
- Personnel qualification and training;
- Contingency planning, including operator procedures after failure detection to enable continued safe flight, evacuating personnel from high risk areas, and modifying vehicle trajectory to avoid high risk areas; and
- Process approval, including an evaluation of risk reduction, mitigation strategies, and configuration management.

The system safety process and associated risk analysis that the FAA proposes to require is substantially similar to the engineering analysis a vehicle developer would complete to assess the viability and the probability of success of an intended operation. Developers would also need this information to convince and assure investors of the soundness of their investment.

The FAA is developing guidance material to assist the industry in complying with the proposed system safety approach. In discussions, industry representatives recommended that the FAA develop an approach built around engineering documentation during specific program phases, such as design and development, manufacturing, and vehicle operations. Others have stated that [an applicant's submission] [the documents] should outline the applicant's ''philosophy'' but that the FAA should require evidence supporting the documentation. The FAA invites further comments and recommendations that would assist in developing an acceptable analysis to ensure all factors affecting public health and safety and the safety of property are considered and addressed specifically.

3. Operational Restrictions on Reusable Launch Vehicle Launch and Reentry

The system safety process, in combination with quantitative risk criteria, yields a performance envelope within which an applicant demonstrates its ability to operate without excessive risk to public safety. But these are analytical processes only and may not reflect real world performance even under the best of circumstances.

As noted above, the risk a vehicle poses to public health and safety and the safety of property is a product of two factors: the probability of a failure event and the consequences of that failure event. If the probability of a failure event is related directly to vehicle reliability and that reliability cannot be determined accurately, public health and safety and the safety of property can be protected only by limiting the consequences of a failure event. Therefore, based on the uncertainties involved in the operation of an unproven RLV or reentry vehicle and the projected benefits resulting from the imposition of operational restrictions on such vehicles (based on a current assessment of probable system failures), the FAA proposes to impose operational restrictions on a vehicle that has not proven system performance and reliability through a flight test program or operational use.

In support of proposed restrictions, the FAA notes that industry representatives have stated that, historically, predictions of vehicle performance and failure modes have often overlooked key events or circumstances. None of the significant failures in the Apollo program or other ELV programs were predicted. Also, failure rates for the first launch of new launch vehicles are significant. While a quantitative risk analysis is an important and necessary tool in the development of a vehicle concept, the FAA considers it inappropriate in this proposal to allow the flight of an unproven and untested RLV or reentry vehicle over populated areas in a manner that can affect public safety based solely on the favorable results of a quantitative risk analysis.

The FAA does not believe an adequate determination of system performance and reliability for new flight concepts can be demonstrated solely through hazard analyses and ground tests. Accidents or other failures often are the result of an unforeseen combination of hardware and software failures in combination with external influences, such as human error. System design validation and functional performance verification could possibly be accomplished in 10 to 20 flights, depending on the design unique to each vehicle. However, a relatively large number of flights may be needed to demonstrate reliability and to understand unanticipated failure modes. Some industry representatives have expressed the opinion that one would need to complete 1,000 flights to accurately determine reliability of a vehicle. At the May 1998 FAA meeting with RLV industry representatives, industry noted that the STS (Space Shuttle) is still in the midst of its test program.

Moreover, because of the costs and disadvantages of flight testing, the FAA expects that many RLV and reentry vehicle operators will propose to validate vehicle design through the use of sophisticated computer simulations, ground testing, or other detailed analyses. The FAA does not object to this anticipated approach but does believe it necessary to impose operational restrictions in the interest of public safety until vehicle performance is proven.

Finally, the FAA is not proposing rules applicable to reuse or reflight of a particular vehicle. Each flight of a reusable launch vehicle would be required to satisfy the safety criteria promulgated by the agency in licensing rules, and an applicant's demonstration that it has satisfied the criteria would have to account for effects of prior flight on vehicle performance.

For these reasons, the FAA proposes to impose operational restrictions that would apply to *all* RLV launches and reentries, with an additional restriction on the flights of unproven vehicles at least until sufficient data is obtained about vehicle performance to warrant relief from that restriction.

A. *Restricting flight over populated areas.* The FAA defines flight restrictions applicable to flight of an RLV or reentry of a reentry vehicle in terms of its ''dwell time,'' which refers to the measured period of time during which an area is exposed to hazards from a vehicle's operation, and its instantaneous impact point, or IIP. The IIP reflects a projected impact point on the surface of the Earth where the vehicle or vehicle debris in the event of failure and break-up would land. A vehicle's IIP is not generally the area immediately under the vehicle's flight path because the vehicle's momentum and atmospheric conditions will cause the vehicle to impact in some other location. The projected IIP of a vehicle can be calculated with some degree of accuracy if the vehicle's aerodynamic characteristics are known. The projected IIP of an RLV during ascent to orbit moves across the surface of the Earth until the vehicle attains orbital velocity. Once on orbit, a vehicle no longer has an IIP.

The FAA does not believe it would be appropriate to allow the IIP of an unproven RLV or reentry vehicle to pass over populated areas unless the risk is very low, even if failure occurs. In other words, if the vehicle were to fail and the vehicle or debris from vehicle break-up were dispersed in the course of vehicle

flight, the flight path and trajectory must be designed to minimize the risk of debris impacting a populated area. The proposed regulation therefore limits public risk exposure to an E_c of not greater than 30×10^{-6} assuming a failure while the IIP is over each populated area.

Thus, for unproven vehicles, the FAA proposes that during *any* segment of flight, the projected IIP of the vehicle shall not have substantial dwell time over a populated area. The applicant may either avoid any passage of the vehicle's IIP over populated areas or may demonstrate that the E_c criteria of $\leq 30 \times 10^{-6}$ would be satisfied *even if the vehicle were certain to fail* while its IIP is over a populated area.[3] An applicant can select the approach to limiting public risk that best suits its proposed operations.

For a proven vehicle, the FAA proposes that a vehicle may not have substantial dwell time over densely populated areas but for the time being proposes to determine what is ''substantial'' and ''densely'' on a case-by-case basis to afford the agency flexibility in evaluating an RLV or reentry flight proposal. Substantial dwell time over a populated area could result from a stationary or slowly moving IIP that remains over a populated area or a rapidly moving IIP that traverses numerous populated areas. Typical dwell time for ELV operations ranges from four to six seconds of flight but varies depending upon the point in vehicle flight during which it occurs. For example, dwell time in the first seconds of a launch would not be tolerated because of the risk of vehicle failure. Later in flight when a vehicle is nearing orbital velocity, some dwell time over populated areas has historically been tolerated because the probability of failure and its consequences are much reduced. Thus, for any particular RLV flight or reentry proposal, the agency would evaluate on an individual basis the public safety risks associated with proposed dwell time over populated areas. However, in any event, vehicle operations would be assessed against E_c criteria, which may not be exceeded.

The FAA is not prepared to state in a rule of general applicability the point at which an RLV transitions from an ''unproven'' state to a proven one. The number of flights necessary to determine the point of transition will depend on the unique design characteristics of the vehicle. The FAA believes that, at a minimum, an operator must validate its risk analysis with flight data in order to ''prove'' the performance of a vehicle. In this context, the term ''validate'' means that the vehicle's flight data show that the vehicle operated in a manner substantially similar to that predicted by the operator's risk analysis.

As stated earlier, the number of flights necessary to validate a vehicle's risk analysis also would depend on the nature of the operations the vehicle would be expected to perform. For example, if an operator proposes to operate its vehicle over populated areas and to rely on an abort capability to achieve required levels of safety, the operator would be required to demonstrate that the vehicle can perform the critical abort and recovery maneuvers necessary to fly safely.

The agency also believes it prudent to gain practical experience in observing the stresses of flight on reentry vehicles, particularly those intended for reuse, before issuing a pronouncement of the point at which a vehicle is ''proven'' for purposes of safety regulation. In adopting this stance, the FAA is mindful that the nation's STS, commonly referred to as the Space Shuttle, is still undergoing a test program under NASA's purview, despite its many flights. Therefore, before the FAA would allow an RLV or reentry vehicle to fly over densely populated areas, an applicant would need to prove that its vehicle maintains structural and aerodynamic integrity throughout its proposed flight regime (i.e., flight lifetime), and that the operator can maintain command and control of the vehicle during flight.

That said, the FAA is not specifically mandating adherence to a flight test regime to demonstrate vehicle capability. Traditionally, flight testing has not been required of ELVs. Because ELVs are generally launched over ocean areas and the flight safety systems are subject to rigorous design and testing standards such that little public risk exposure is involved, there is little to be gained in terms of public safety risk mitigation from a requirement to conduct test flights of ELVs for the purpose of design validation. Moreover, because each flight of an ELV is its first flight, and its only flight, little would be learned about the effects of flight stress on reusability of the vehicle.

RLV industry representatives have noted that for vehicles currently under development it would be impractical to require thousands of flight test hours, and the FAA concurs that a thorough flight test program similar to that required of commercial aircraft would stifle the emerging industry and pose a number of difficulties. Furthermore, by the nature of their operational envelopes, differences between an RLV or reentry vehicle test flight and operational flight are less distinct than those of an aircraft test flight and operational flight. While an aircraft may conduct tests of its full-flight envelope within a remote site, conducting full-flight tests of an RLV or reentry vehicle would require suborbital and/or orbital flights over substantially large areas. Because of the physical range of such flights, there would be little distinction between a test and an operational flight with its inherent risks. Imposition of a flight test requirement also would impose on the industry direct costs to conduct the tests and indirect costs through lost revenue, reduced life cycles, and vehicle test flight damage that would have to be repaired to ensure the vehicle meets regulatory standards for reentry operations. For these reasons, the FAA is not proposing requirements for the conduct of a flight test program but rather has proposed a regulatory structure that would require an applicant to demonstrate that its proposed operations meet an acceptable level of risk and conform to certain operational requirements. However, an operator may choose to conduct flight-testing to ensure its proposed operations meet proposed risk mitigation criteria.

The FAA requests views on appropriate measures of validating new vehicle performance and criteria for determining the point at which a vehicle may be considered ''proven.''

B. *Monitoring critical systems.* The operator of an RLV or reentry vehicle must be able to monitor and verify the status of launch and reentry safety-critical systems before launch, during launch flight, and before reentry flight. The status of a reentry safety-critical system before reentry would affect any decision to conduct reentry operations. To ensure an operator is aware of the status of the vehicle, the FAA proposes to require procedures for monitoring performance of on-board, safety critical systems just prior to enabling reentry. Monitoring would provide an operator with the status of key systems before conducting public safety critical operations and would ensure that reentry flight would be initiated only under nominal or non-nominal conditions that have been assessed through the system safety process and satisfy the risk threshold. Critical information would have to be provided perhaps through telemetry to a control

[3] The proposed restrictions would apply only to those segments of flight where the IIP touches the surface of the Earth. Certain reentry-readiness operations performed on orbit during the ''reentry phase of flight'' do not involve an IIP that touches the surface of the Earth and therefore would not be affected by the criteria.

center or individual with command capacity and decision making responsibility. Other information used for system validation, system reuse, performance characterization, or post-flight anomaly investigation could be recorded for review after flight. This type of data may facilitate transition from an unproven to proven vehicle; however, the FAA is not mandating real-time monitoring of non-safety critical systems.

C. *Positive enabling of fail-safe reentry.* To further enhance safety, the FAA proposes a fail-safe operational procedure whereby an operator must issue a command that enables vehicle reentry unless the vehicle is designed to operate suborbitally. In the event reentry cannot be enabled, the vehicle would remain in orbit. Totally autonomous initiation of reentry would not be allowed to ensure that certain clearances and system verifications are completed to assure that a reentering vehicle will not pose safety risks to the public. These may include clearance of airspace in the reentry corridor, securing reentry sites, verifying the configuration and status of reentry safety critical systems, and verifying reentry corridor weather is within vehicle operational constraints. Such activities would be external to the vehicle's systems and autonomous control systems would not verify them.

D. *Reentry sites.* To minimize public safety risk due to an off-site landing, the site selected for reentry of a reentry vehicle or as the landing area for an RLV must be sufficiently large such that the vehicle will land within it with a certain degree of predictability. The agency assesses size suitability of a proposed reentry or landing site by using the three-sigma footprint measure commonly applied to launch operations. The three-sigma footprint describes the area where the vehicle will land with a .997 probability rate, assuming no major system failure.

The statistical term ''three-sigma'' refers to three standard deviations from the mean, or average point, assuming a standard normal distribution. The area that is within three standard deviations from the mean point encompasses the area surrounding it with the mean at its center. An area within two or even one standard deviation of the mean point is a smaller, more precise measure; however, statistically there is less chance of an event falling within that range. The larger the area, the higher degree of confidence one has of an event falling within its boundary limits, assuming a normal distribution of events.

For example, if the reentry site were an area on a target, the mid-point or center point is the mean and the small area around it is the bulls-eye. The bulls-eye represents one standard deviation from the mean or center point. The first contour area is two standard deviations from the mean point and the second contour area is three standard deviations from that point. Assuming a normal distribution, the three-sigma area, or the area within two contours of the bulls-eye, represents the area in which an archer's arrow would strike with a three-sigma probability.

However, the size of the area must be adjusted for different conditions or variables, such as distance from the target, wind, or aerodynamic qualities of different kinds of arrows. If one's ability to meet the three-sigma probability distribution depends on the existence of certain conditions, then those conditions become requirements.

From a regulatory standpoint, an applicant would be required to demonstrate that a proposed reentry or controlled landing site is large enough to contain the landing impacts of its vehicle with a three-sigma probability, assuming a nominal reentry, and the conditions or assumptions on which the demonstration is predicated would become conditions of the license.

The size of the area must be large enough to accommodate potential trajectory deviations that may occur. Therefore, in determining the necessary size of the three-sigma area, an applicant should calculate the errors associated with physical forces that act on the vehicle to cause its flight path to deviate from the planned trajectory, if reentry is intended to occur despite those errors.

Maneuverability of a vehicle is likely to affect the three-sigma area. For example, the three-sigma area for an airplane may be a narrow ellipse because the pilot can stand otherwise control the vehicle's descent such that it touches down within a narrow band. An uncontrolled or ballistic vehicle, such as the COMET/METEOR reentry vehicle, required a large three-sigma area because of imprecise orientation of the vehicle at the point at which reentry was initiated and the varying effects of atmospheric forces on the vehicle.

In any case, a designated reentry site, including any designated contingency abort location, would have to be large enough to ensure the probability of landing outside the designated area is not greater than .997 for nominal vehicle operations.

Reusable Launch Vehicle Mission and Other Reentry Licenses

For the near term, the FAA envisions that the majority of reentry activities subject to FAA licensing jurisdiction would involve reusable launch vehicle technology, as opposed to the COMET/METEOR type of reentry vehicle. The latter was intended for launch as a payload by an expendable launch vehicle, would enter its designated orbit and ultimately perform an unguided ballistic reentry to a designated reentry site about 30 days later. In the case of such reentries, the same risk criteria would apply to launch and reentry of the reentry vehicle as would apply to any other RLV mission, under the FAA's proposal. However, other regulatory requirements to assure public safety, such as operational restrictions, would be directed exclusively to RLV missions. Other safety requirements may only be appropriate for reentry vehicles resembling the COMET/METEOR vehicle system. Therefore, to make the requirements ''user friendly,'' the FAA proposes to address RLV mission licensing requirements in a separate part of the licensing regulations so that RLV operators can see, at a glance, the commercial space transportation regulations applicable to their operations. A separate part is proposed to address unique safety requirements applicable to licensing other types of reentries, that is, those that don't involve RLVs, even though policy, payload reentry, and environmental review requirements would be comparable to those applied to RLV missions.

1. Reusable Launch Vehicle Mission Licensing Overview

Before granting an applicant a safety approval, the FAA would review the appropriateness for a particular launch activity of the following items: the location, size, and design configuration of the proposed launch site; launch operational procedures; personnel qualifications; range safety equipment and instrumentation; vehicle safety systems; and the applicant's flight safety analysis.

An RLV launch operator would be required to possess the ability to monitor the status of launch and reentry safety critical systems during countdown to launch. The FAA also proposes that an operator have the ability to activate the vehicle's flight safety system (FSS), if any, or to invoke contingency plans if the vehicle is not operating within approved mission parameters and poses an unreasonable risk to public health and safety. This

requirement does not mean that an FSS cannot also function automatically or autonomously. Such systems are desirable where, for example, a human monitor may not be able to react in sufficient time to achieve a safe condition.

The term FSS encompasses a variety of devices designed to place a vehicle in a mode less hazardous to public health and safety and safety of property. A type of FSS commonly used on ELVs is a destructive-type FTS, which is used to terminate flight and destroy the vehicle. However, many reentry vehicles and RLVs do not propose to rely on a destructive-type FTS as a primary mechanism for protecting public safety because the vehicle may be capable of attempting a nondestructive abort. The proposal would not mandate any particular type of FSS. An applicant for a launch license would be permitted to use any type of FSS necessary to ensure public safety during the applicant's proposed operation of the vehicle. Mission rules derived from the applicant's risk analysis, among other things, would dictate whether and when to activate the FSS.

Members of the RLV industry have agreed generally that some type of FSS would be necessary to meet the risk limitations imposed on launch vehicles by Federal ranges. Many believe that a reentry vehicle or RLV operator that proposed to operate without an FSS would have to improve overall vehicle reliability and performance to meet those risk limitations. Others have also asserted that some type of human intervention capability would be necessary before a vehicle could be allowed to operate within controlled airspace.

An RLV may have the capability to abort launch flight to a pre-planned and approved location. Other vehicles would require emergency planning so that in the event of a failure or anomaly, they can be directed to an unpopulated area or attempt a safe landing. Therefore, an operator without abort capability would be required to plan a flight path that allows for safe flight abort on an emergency basis before the vehicle reaches orbit.

Once an RLV achieves orbit, the FAA was concerned that if the vehicle could not reenter or must abort during reentry, an operator would have to be able to incapacitate the vehicle so it would not substantially survive reentry. Agency concern was based on the view that, unlike an expendable launch vehicle, a reentry vehicle is designed to survive reentry intact. However, industry representatives have noted that reentry vehicles are designed to survive reentry under very specific reentry parameters. An operator must undertake significant effort to achieve a successful reentry. Industry has compared successful reentry to ''flying the vehicle through a key hole.'' Because an uncontrolled RLV or reentry vehicle may be unlikely to survive reentry, the FAA does not propose a requirement that an operator would have to be able to incapacitate the vehicle so that it would not survive a random return to Earth. However, the applicant must demonstrate that a random reentry will not exceed acceptable risk for the mission.

The FAA is proposing a quantitative risk measure in evaluating RLV mission safety because it forces a vehicle designer to consider failure rates, consequences, and mitigation of unacceptable risks. Acceptable flight risk would be limited to the standard applied for launches from Federal launch ranges, that is, that the E_c is not greater than 30×10^{-6}, a collective measure of risk, on a per-mission basis. Issues related to risk limitation and risk analysis are discussed above in relation to RLV launch and reentry. An applicant proposing to conduct an RLV mission would also be subject to operational requirements and restrictions because the FAA believes them necessary to limit risk to public safety as the industry conducts operational flights of innovative vehicle concepts.

The proposal would identify the two types of RLV mission licenses issued—a mission-specific license and an operator license. The mission-specific license would authorize an operator to conduct one or more RLV missions from a designated launch site to a designated reentry site, using essentially the same type or model of RLV such that it has substantially similar design, performance, and operational characteristics. Because more than one flight may be authorized, the license would be sufficiently broad to allow an operator to conduct a series of RLV test flights within identified parameters. The license would terminate automatically with the completion of all authorized activity or the expiration date of the license, whichever first occurs.

The proposed operator license would authorize an operator to conduct RLV missions using any of a designated family of vehicles from any launch site specified in the license to any reentry site specified in the license. A family of RLVs has similar design and operational characteristics, but each member of the family may be capable of different performance characteristics. The term of the operator license would be set at a 2-year renewable period.

The FAA expects it will first issue a new operator a mission-specific license to conduct RLV missions. Mission-specific licenses can be structured so as to accommodate a proposed test program that may consist of a series of test flights within an envelope of approved parameters. After the operator has demonstrated several successful reentries, it may apply to the FAA for an operator license. The FAA has used a similar licensing approach successfully for new launch operators and operation of new vehicles.

To receive an RLV license, an applicant would be required to obtain policy and safety approvals and complete a payload reentry determination and environmental review, if applicable. Procedural regulations governing the policy approval, payload reentry determination, and environmental review generally would be consistent with the corresponding regulations under part 415, Launch License.

To complete a safety review and receive approval for an RLV mission, an applicant would need an acceptable safety organization; mission rules, procedures, and contingency plans; a communications plan; and a mishap investigation and emergency response plan. In addition, the proposed operation could not pose an unacceptable risk to public safety as demonstrated through a risk analysis designed to ensure compliance with regulations to mitigate risk and protect public health and safety and the safety of property.

2. Reentry Licensing Overview

A separate part would prescribe reentry licensing and post-licensing requirements and would be modeled after the RLV mission license regulations. Unique attributes of reentry vehicles that are not RLVs would be assessed by the FAA on an individual basis as part of the safety approval process. The same risk criteria covering launch and reentry and the system safety process approach would apply to an applicant for a license to reenter a reentry vehicle. Operational requirements and restrictions would result from the applicant's system safety program plan, which would define the safe operating limits and procedures for reentry vehicle operations. Requirements applicable to launch of a reentry vehicle would depend on the type of vehicle used to place the reentry vehicle in orbit or otherwise in outer space. For example, an expendable launch vehicle (ELV) launched from a Federal range would be subject to the

licensing requirements contained in part 415 of this subchapter.

The FAA is proposing a mission approach to reentry licensing by assessing the combined risk of launch of a reentry vehicle with its reentry to determine that a reentry may be licensed. The agency considers that no less stringent safety criteria should be imposed upon a reentry because it occurs as a separate event, either by time or function, from the launch that placed it in Earth orbit or outer space. However, the FAA understands that reentry vehicles resembling the COMET/METEOR vehicle may remain in space for extended periods and may be operated under the responsibility of an operator different from that which launched the vehicle initially. To address these considerations, the FAA considered whether to apply a COMET/METEOR type of risk criteria to reentry, leaving launch risk as it currently is stated. The COMET risk criteria that there shall be no greater than one in a million probability of a casualty, when combined with acceptable launch risk, actually imposes a more stringent criteria on reentry than a combined collective risk measure of $E_c \leq 30 \times 10^{-6}$. The FAA wishes to utilize an appropriate measure of risk for reentry capability and requests comments on its proposed approach of applying mission risk.

Section-By-Section Analysis

FAA regulatory and licensing responsibilities have been extended by statute to include reentry, as well as launch. It is therefore necessary to add the term ''reentry'' or ''operation of a reentry site'' to agency procedures and enforcement provisions, as follows.

Section 400.2 Scope

Section 400.2 sets forth the scope of regulations presented in 14 CFR Chapter III. The scope would be revised to refer generally to commercial space transportation activities subject to 49 U.S.C. Subtitle IX, chapter 701. The FAA proposes to generalize the scope of the regulations rather than to add specific reference to reentry licensing and other authority under the statute.

Section 401.5 Definitions

New terms are added to the list of definitions. They are: ''contingency abort,'' ''emergency abort,'' ''flight safety system,'' ''operation of a reentry site,'' ''reenter,'' ''reentry accident,'' ''reentry incident,'' ''reentry operator,'' ''reentry site,'' ''reentry vehicle,'' ''reusable launch vehicle,'' ''safety-critical,'' and ''vehicle safety operations personnel.'' A reusable launch vehicle would be a reentry vehicle when it is designed to return from Earth orbit or outer space to Earth substantially intact.

The term ''reentry accident'' refers to unplanned events resulting in certain consequences listed in the definition. Accordingly, reentry to a pre-planned abort location would not qualify as a reentry accident unless it resulted in a casualty to an uninvolved person or damage to unassociated, off-site property.

The term ''mishap'' would be revised to include reentry events.

Section 404.1 Scope

Section 404.1 sets forth the scope of the agency's procedures for issuing implementing regulations. Rather than referring to specific licensing authority of the agency under 49 U.S.C. Subtitle IX, chapter 701, § 404.1 would be revised to refer to commercial space transportation activities falling within the agency's statutory authority.

Section 404.3 Filing of Petitions to the Associate Administrator

Section 404.3 would be revised to include rulemaking petitions regarding reentry and operation of a reentry site.

Section 405.1 Monitoring of Licensed and Other Activities

Reentry sites and reentry vehicle manufacturing, testing, assembly, and production facilities would be subject to FAA monitoring and observation and § 405.1 would be revised accordingly.

Section 405.5 Emergency Orders

The agency's authority to terminate, prohibit or suspend a licensed activity extend to reentry and operation of a reentry site. Section 405.5 would be revised accordingly.

Section 406.1 Hearings

Rights to a hearing extend to an owner or operator of a reentry payload, as well as a licensee, and section 406.1 is revised accordingly.

Section 413.1 Scope

The procedures contained in part 413 of 14 CFR Chapter III would apply to an application for a license to reenter a reentry vehicle or to operate a reentry site. Reference to reentry licensing requirements is added to section 413.1 in this proposal.

Section 413.3 Who Must Obtain a License

The proposal would revise paragraph (a) to require any person to obtain a reentry license to reenter a reentry vehicle in the United States or to operate a reentry site within the United States.

Under the proposal, paragraph (b) would be revised to require an individual who is a U.S. citizen or an entity organized under the laws of the United States or any State to obtain a reentry license to reenter a reentry vehicle outside the United States or to operate a reentry site outside the United States.

Proposed paragraph (d) would be added. That paragraph would require a foreign entity in which a U.S. citizen has a controlling interest to obtain a reentry license or, if the activity is occurring in certain locations and subject to certain conditions. The geographic constraints and conditions in the proposal would be identical to those imposed on licensed launch activities and launch site operators in current paragraph (c) of this section.

Section 415.1 Scope

Part 415 contains the approvals necessary to obtain a license to launch a launch vehicle from a Federal or non-Federal launch site. The FAA proposes to limit the scope of part 415 to vehicles other than reusable launch vehicles (RLV) and to place licensing requirements for the conduct of RLV missions in a separate part of the regulations. Launch and reentry flight phases of a proposed RLV mission would be evaluated under a single set of risk criteria applicable to the mission. Placing RLV mission requirements in a separate part, part 431, should facilitate understanding of the licensing requirements applicable to RLV operations.

Part 431 Launch and Reentry of a Reusable Launch Vehicle (RLV)

The proposal would create a new part 431 that prescribes licensing requirements for the conduct of missions involving reusable launch vehicles. Part 431 would include subpart A (General), subpart B (Policy Review and Approval), subpart C (Safety Review and Approval for RLV Missions), subpart D (Payload Reentry Review and Determination), subpart E (Post-Licensing Requirements—RLV Mission License Terms and Conditions), and subpart F (Environmental Review). Part 431 is organized in the same manner as part 415 ''Launch License'' and has been modified to address regulatory concerns applicable to RLV operations. Because safety aspects of an RLV mission would be evaluated on a per mission basis, commencing upon initiation of vehicle flight, proceeding through orbital insertion and concluding with the vehicle's landing on Earth, comprehensive requirements applicable to all licensed flight phases

of an RLV mission are included in this part. Specific mention is made in part 431 where requirements of other parts of the commercial space transportation regulations are applicable.

Section 431.1 Scope

Proposed § 431.1 would establish the applicability of part 431. The proposed part would prescribe the requirements for obtaining an RLV mission license and any continuing requirements to remain licensed.

Section 431.3 Types of Reusable Launch Vehicle Mission Licenses

The proposed section would identify the two types of RLV mission licenses that would be issued and set forth the privileges and limitations of the licenses. Under the proposal the FAA would issue either a mission-specific license or operator license, on bases comparable to that used for issuing launch licenses. A licensed RLV mission includes launch or ascent, and reentry or descent, authorization. Both authorizations are necessary to conduct an RLV mission; however, they would be embodied in a single license. The term ''mission'' is used to characterize both ascent and descent flight phases of an RLV operation but should not be confused with mission-specific authorization.

A mission-specific license need not be limited to a single RLV mission. The license would identify the specific RLV missions to which it applies and may authorize a proposed flight test program within an envelope of approved parameters. An expiration date would be stated in the license so that it is not unlimited as to time.

An operator license would provide broader authority to the licensee and, as with launch licenses, would be issued to operators that have demonstrated capability to conduct safe operations on an ongoing basis. The FAA is proposing an initial two-year license term so that it can routinely reevaluate licensee qualifications. Operator licenses issued under part 415 were initially authorized for a two-year term and have recently been extended to a five-year term. The FAA considers two years a reasonable duration at the outset of RLV operations.

Section 431.5 Policy and Safety Approvals

Under the proposal, a license applicant would be required to obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part.

Section 431.7 Payload and Payload Reentry Determinations

For purposes of launching a payload into earth orbit or outer space there should be no unique issues presented by the fact that an RLV is the transportation vehicle that places the payload in space. Accordingly, proposed paragraph (a) of this section states that the FAA would require an applicant to obtain a payload determination in accordance with part 415 requirements unless the proposed payload were exempt from payload review. Payload reentry issues may be different, however, and the FAA would require a separate payload reentry determination, as indicated in paragraph (b), for purposes of returning a payload to Earth unless it is exempt from FAA review. Payloads exempt from FAA review include U.S. Government payloads. Payloads subject to reentry review by another Government agency would not be subject to duplicative review by the FAA. For a payload that would be substantially similar to a previously approved payload, the previously issued payload reentry determination could serve as the basis for a comparative analysis. Proposed paragraph (c) would allow a previous payload reentry determination to be used to meet the requirements of proposed paragraph (b). Proposed paragraph (d) identifies the payload review procedures applicable to reentering a payload. A payload review determination may be requested of the agency in advance of or separately from an RLV mission (or other reentry) license.

Section 431.9 Issuance of a Reusable Launch Vehicle Mission License

The proposal states that the FAA would issue a license to an applicant who has obtained all approvals and determinations required under this chapter for an RLV mission license, including a policy and safety approval and payload reentry determination, if necessary. Although the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the FAA to perform an environmental review of major Federal actions, such as issuing an RLV mission license, specific environmental requirements would not be set forth in this section, but rather in proposed subpart F of this part.

The proposed section also would require a licensee to conduct its operations in accordance with the representations in its application and terms and conditions in license orders accompanying the RLV mission license, including financial responsibility requirements for launch and reentry activities.

Section 431.11 Additional License Terms and Conditions

Under the proposal, the FAA could amend an RLV mission license by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicable regulations. Although standard terms and conditions that apply to most RLV mission licenses are proposed in subpart E, the unique circumstances of a particular licensee may require the FAA to impose additional requirements to protect public health and safety, safety of property, or U.S. national security and foreign policy interests, or to ensure compliance with international obligations of the United States.

Section 431.13 Transfer of a Reusable Launch Vehicle Mission License

Under proposed § 431.13, only the FAA would be able to transfer an RLV mission license. The prospective transferee would need to satisfy all requirements for obtaining a license as specified in this chapter. The FAA would amend the license to reflect any changes necessary as a result of license transfer.

Section 431.15 Rights Not Conferred by a Reusable Launch Vehicle Mission License

Proposed § 431.15 would state that an RLV mission license would not relieve a licensee of its obligation to comply with applicable laws.

Subpart B—Policy Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

This subpart would describe the proposed requirements for a policy review. An applicant could choose to submit an application for a policy review with a comprehensive license application or separately in advance of submitting the complete application.

Section 431.21 General

Under the proposal, the FAA would issue a policy approval to an RLV mission license applicant upon completion of a favorable policy review; it would be part of the licensing record.

Section 431.23 Policy Review

Proposed § 431.23 states that the FAA would coordinate the policy review with other Government agencies, including the Department of Defense (DOD), Department of State (DOS), Department of Commerce (DOC), NASA, and Federal Communications

Commission (FCC). Under the policy review, the FAA would determine whether conduct of an RLV mission, inclusive of launch and reentry flight, would adversely affect U.S. national security or foreign policy interests, jeopardize public health and safety or the safety of property, or be inconsistent with international obligations of the United States. In determining whether the mission would jeopardize public health and safety or the safety of property under the policy review, the FAA would consider safety issues from a policy perspective rather than an engineering perspective.

Section 431.25 Application Requirements for Policy Review

The proposed section would describe the information an applicant would be required to provide to obtain a policy review. The FAA would require this information to effectively begin consultation with other Government agencies regarding resolution of any potential policy issues. Proposed paragraphs (a) and (b) would require a basic identification of the vehicle and its systems. Foreign ownership information would be required to be identified in proposed paragraph (c).

Under proposed § 431.25(d), an applicant would be required to provide the range of proposed launch and reentry profiles, including reentry sites and any planned contingency abort locations. An applicant must also provide the sequence of planned events or maneuvers during an RLV mission. Although these vary by vehicle and mission, the FAA would expect to be informed of events such as engine burn time; stage separation events; pitch, yaw, and roll maneuvers; and engine cutoff. This information could be provided in the form of text, diagrams, or charts.

For orbital RLVs, proposed § 431.25(e) would require information concerning intermediate and final orbits intended for the vehicle and its upper stages, if any, and their estimated orbital lifetimes.

Section 431.27 Denial of Policy Approval

Under the proposal, the FAA would notify an applicant in writing if a policy approval is denied. The notice would state the reasons for denial and allow an applicant to respond and request reconsideration. An applicant could correct the deficiencies identified in the denial and request reconsideration of the denial. Alternatively, an applicant could request a hearing upon denial of a license.

Subpart C—Safety Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

Subpart C would describe the FAA's safety evaluation process for reentry license applicants.

Section 431.31 General

The proposal states that the FAA would conduct a safety review to determine whether an applicant is capable of launching and reentering, or otherwise landing, a reentry vehicle and payload, if any, from and to a designated site without jeopardizing public health and safety and the safety of property. The launch site may be different from the reentry landing site, but both must be approved by the FAA in the context of evaluating safety issues presented by a particular RLV mission. The safety review would be conducted from an engineering perspective to ensure that all aspects of the proposed RLV mission would be sufficient to support safe operations. The safety review is necessarily tailored to the unique attributes and capabilities of a vehicle and is conducted on an individual basis.

Under the proposal, the FAA would notify an applicant in writing of any issues that might prevent issuance of a safety approval. The notice would state the reasons for lack of safety approval and allow an applicant to respond and correct the deficiencies identified.

Section 431.33 Safety Organization

The FAA concurs with National Transportation Safety Board (NTSB) reports and the Rodgers Commission report that indicate an independent safety organization is key to ensuring safe transportation operations. The proposal, therefore, would require an RLV mission license applicant to possess a safety organization. The FAA would evaluate an applicant's safety organization to determine whether the structure, lines of communication, and approval authority an applicant establishes would enable the applicant to identify and address safety issues and to ensure an applicant conducts operations in accordance with its license and the proposed regulations.

The experience gained by the FAA in regulating aviation and launch operations has shown that an independent safety official with direct access to the person responsible for an applicant's licensed activities can positively influence safety. Therefore, the FAA also proposes that the safety official report directly to the person responsible for the conduct of licensed activity to ensure that management adequately considers public safety concerns before initiating either flight phase of the mission. The safety official may be dual-hatted in that he or she may perform functions other than safety-related or mission-driven operations for the applicant as long as there is no ''conflict of interest'' with safety responsibilities.

The safety official would evaluate an applicant's readiness to safely conduct an RLV mission by conducting operational dress rehearsals and completing a readiness determination. Rehearsals would allow an operator to verify that vehicle safety operations personnel are ready for launch and reentry and can manage non-nominal events, especially if a considerable period of time has elapsed since the operator's most recent conduct of a mission. A review typically would be conducted before launch and, for orbital RLVs, would address reentry readiness as well. However, before initiating reentry, an operator would be required to conform with mission rules designed to ensure safe reentry and verify the status of safety critical systems. The reviews would ensure all system and personnel readiness problems are identified and resolved, all systems needed for safe conduct of the mission are checked and ready, and each participant is cognizant of his or her role in the operation. While a rehearsal may not be necessary in every case, it is critical in certain situations, such as operations with a new vehicle, reentering to a new site, or after significant personnel changes.

This proposal also would impose an affirmative obligation on the person responsible for licensed activity to address any hazards and risks to public safety identified by the safety official. Such action would help ensure that RLV mission operations satisfy the proposed expected casualty criteria. The FAA believes that management attitude influences an organization's safety compliance; therefore, the proposed regulations would impose a safety obligation on the person responsible for licensed activity to address identified hazards.

Proposed § 431.33(a) would require an applicant to maintain and define its safety organization by identifying lines of communication and approval authority. A number of different individuals typically have input and decision authority with respect to the readiness of various vehicle and safety systems. FAA and NTSB investigations have shown that mishaps could result if the role of each critical individual in the organization is not defined clearly and understood by all parties. Therefore, the

applicant would have to identify these relationships by clearly establishing and identifying the lines of communication and approval authority for all mission decisions. An applicant would have to clearly identify persons with authority to make ''hold'' and ''go/no-go'' decisions and to authorize the resumption of the countdown or a recycle procedure, for both launch and reentry flight phases. The FAA recommends using organizational charts as an efficient method of depicting an applicant's organization, lines of communication, and other required information.

Proposed § 431.33(b) would require an applicant to designate a person responsible for the conduct of all licensed RLV mission activities.

Proposed § 431.33(c) would require an applicant to identify a qualified safety official to ensure compliance with the applicant's safety policies and procedures. The person assigned to the position of safety official would have the management and technical education, training, and experience to ensure the highest degree of safety in the applicant's operations. The safety official must be identified by title or position and by name and qualifications. Before mission operations begin, and before initiation of RLV reentry or descent, the person responsible for an applicant's licensed activities must address all hazards and risks to public safety identified by the safety official.

The safety official would be responsible for evaluating an applicant's readiness to safely conduct an RLV mission by monitoring compliance with the applicant's safety policies and procedures, completing a readiness determination, and conducting operational dress rehearsals. Rehearsals would have to simulate both nominal and non-nominal conditions, under the mission readiness requirements listed in proposed § 431.37, including vehicle and range safety system failures.

Section 431.35 Acceptable Reusable Launch Vehicle Mission Risk

Under the proposal, paragraph (a) would establish the limits on the risk the FAA would allow for an RLV mission. The FAA proposes to assess risk on a per mission basis, commencing with initiation of vehicle flight through authorized landing on Earth. Application of risk criteria on a per mission basis means that risks presented by launch of a reentry vehicle and its subsequent reentry or other return to Earth are assessed in a cumulative manner. The expected average number of casualties from a proposed RLV mission could not exceed .00003 ($30x10^{-6}$) and casualties for any launch and reentry mission and .000001 ($1x(10^{-6}$) casualties for persons in the areas adjacent to the reentry site. Risk criteria are presented in proposed § 431.35(b). The term ''public'' would include all members of the general public but would not include the launch operator, reentry operator, and site personnel. Satisfaction of acceptable risk criteria under this part includes consideration of the size and configuration of planned landing sites, including contingency abort locations, and the surrounding area.

The FAA would establish these risk limitations as a standard for all licensed RLV mission activities. An applicant proposing a mission that does not meet the FAA's risk criteria could request a waiver from requirements (or any requirement) under 14 CFR § 404.3, by demonstrating that granting the waiver would be in the public interest.

Proposed paragraph (c) would require an applicant to submit an analysis that assesses public safety risk for the proposed activity under nominal and non-nominal conditions. The analysis would need to demonstrate that the applicant's proposed activity would not expose the general public to an unreasonable level of risk at any time during vehicle flight, as defined in proposed § 431.35(b), and would not expose the general public within a 100-mile area surrounding the reentry site to unreasonable risk, as defined in proposed paragraph (b). Based on the agency's experience in evaluating the COMET/METEOR vehicle system, the FAA believes that it is prudent to ensure that population located within a reasonable area of the intended landing site is not exposed to greater than normal background risk as a result of a licensed reentry. The one hundred mile area surrounding the proposed reentry site was utilized in COMET/METEOR because it limits public risk exposure in the event of a minor system failure during reentry causing a somewhat off-site, but not random, landing.

If an applicant previously has submitted a risk assessment for a similar reentry, the applicant may not need to submit an additional analysis. An analysis that compares the parameters and assumptions of previously approved and proposed activities, after review by the FAA, may be deemed sufficient.

Proposed paragraph (c) would require an applicant to employ a system safety process that identifies and assesses risks to public health, safety and property associated with a nominal and non-nominal mission. The FAA will issue advisory guidance on acceptability of a system safety process under this requirement. At a minimum, it must identify and assess the probability and consequences of reasonably foreseeable hazardous events and safety critical system failures during a mission including consequences of a random reentry that could jeopardize public safety.

Proposed paragraph (d) would specify the data that must be provided by an applicant as part of the demonstration of acceptable risk under this subpart. Included are drawings and schematics for each safety critical system, a timeline identifying all safety critical events and empirical data to substantiate the risk analysis required by this section.

Section 431.37 Mission Readiness

Under proposed § 431.37, an applicant must include procedures for verifying mission readiness for both launch and reentry operations as part of its application. The procedures must enable the person designated and responsible for the conduct of licensed operations to make a judgment of mission readiness before initiating the mission, including launch and reentry site, equipment, vehicle, payload, personnel, and safety-critical system readiness. Mission rules, constraints and contingency or abort plans and procedures must be in a state of readiness as well by ensuring that they are contained in an approved form and coordinated with launch and reentry site operators. Launch and reentry readiness procedures must include dress rehearsal procedures covering nominal and non-nominal situations and provide bases for doing away with dress rehearsals under certain circumstances. Launch and reentry readiness procedures must also cover crew rest requirements and verification.

Section 431.39 Mission Rules, Procedures, Contingency Plans, and Checklists

To ensure a licensee's procedures would be conducted as planned, the FAA proposes that an applicant submit as part of its application written mission rules, procedures, emergency plans, and contingency abort plans, if applicable, and that vehicle safety operations personnel have current and consistent mission checklists. Inconsistencies in critical countdown checklists and procedures can jeopardize public safety. While all mission participants may not have identical checklists, an applicant would need some means, such as a master checklist manual, to ensure participants have current and consistent

procedures. This process would ensure that flight safety critical procedures are completed successfully.

Proposed paragraph (a) would require that an applicant possess adequate mission rules, procedures, contingency plans, and checklists to execute safe nominal and non-nominal operations throughout the mission. Proposed paragraph (b) would require that mission rules, procedures, contingency plans, and checklists be contained in a safety directive, notebook, or other compilation approved by the safety official designated under § 431.33(c) of this part and concurred in by the reentry site operator, if applicable. Under proposed paragraph (c), operations personnel would need current and consistent reentry checklists.

Section 431.41 Communications Plan

An applicant also would be required to submit a communications plan that describes personnel communications procedures during the mission. This requirement would be substantially similar to the current requirement for a launch license applicant to submit a communications plan describing communications procedures during launch, but the procedures would be required to apply throughout the mission. The NTSB has concluded that effective communications are critical to the conduct of a safe launch, and the FAA believes the same rationale applies to RLV and reentry operations.

Personnel would be required to follow communication procedures and proper protocol to help eliminate confusion and cross talk that could cause a miscommunication leading to an unsafe condition. Personnel with decision-making authority over launch and reentry would be available on the same predetermined channel during launch countdown and reentry countdown, if any. Safety-critical communications would have to be recorded and would include hold/resume, go/no go, and emergency and contingency abort commands, and any other irrevocable decisions that could affect public safety or the safety of property.

Section 431.43 Reusable Launch Vehicle Mission Operational Requirements and Restrictions

Under proposed § 431.43, the FAA would establish operational requirements and impose restrictions on RLV missions. Operational requirements would be implemented through procedures developed by an applicant to ensure that RLV mission risks are contained within acceptable levels. In keeping with the preference for performance-based, rather than design, standards the FAA is not dictating the content of procedures. An applicant would be afforded flexibility in developing procedures specific to its vehicle and mission profile that accomplish certain objectives. Procedures would need to cover such safety requirements as ensuring that mission risks do not exceed stated risk criteria for nominal and non-nominal operations, ensuring RLV operations conform with operator procedures derived through the system safety process described in proposed § 431.35(c), monitoring and verifying the status of safety critical systems during mission operations, and activating a flight safety system during the launch flight phase to safely terminate flight in the event the vehicle is not operating within approved limits. The FAA believes that sole reliance by an operator on an autonomous system to abort launch flight is not sufficient to ensure public safety and that, as is the case for nearly all expendable launch vehicles, human control capability is critical to safety.

A reentry site proposed for use in conducting an RLV mission would have to be of sufficient size to accommodate the three-sigma landing dispersion and other landing impacts associated with the reentry vehicle or vehicle stage. The three-sigma footprint requirement for determining site suitability would apply to any reentry site contemplated as part of the mission, that is, the nominal targeted site as well as any contingency abort location identified in order to satisfy acceptable risk criteria during launch of an RLV. A broad ocean area may be a contingency abort location because it would satisfy requirements for site suitability. An applicant for RLV mission safety approval would be required to identify such sites and show that they are attainable given the operational capability of a proposed RLV. Restrictions are also proposed to further mitigate public safety risks during flight of any RLV.

The space industry has been voicing a growing concern regarding the increasing number of objects being placed in orbit that increases the potential for collisions between objects in space. Collisions in space create additional objects that add to the orbital debris environment and increase the potential for damage to other objects. The requirements of this section serve to mitigate hazards associated with space debris. A collision avoidance analysis shall be performed prior to RLV launch to ensure that an RLV, its payload, and any jettisoned components do not pass closer than 200 kilometers to an inhabitable spacecraft. Window closures for launch and reentry activities should be adjusted to account for uncertainties in the predicted positions of inhabitable spacecraft. The 200 kilometer separation distance is currently practiced by Federal launch ranges.

To further assure public safety, the FAA is proposing a number of additional restrictions applicable to all RLVs. The FAA is proposing that the projected IIP of the vehicle shall not have substantial dwell time over densely populated areas during any segment of mission flight. The agency is not setting design-type requirements for determining what constitutes a densely populated area. This determination is consequence-driven, in the agency's view. For example, even though an applicant has satisfied the agency's risk criteria of E_c no greater than 30 casualties in a million missions, if the consequence of a mission accident at a particular location would result in a significant number of actual casualties, then the FAA would view that area as densely populated for safety purposes. To mitigate debris risks that would interfere with the safety of other launch and reentry missions, the FAA proposes that RLV operators ensure no unplanned physical contact between its RLV and payload with other space objects and that explosive risks are minimized. The proposed requirement is intended to mitigate the hazards posed by orbital debris generation to the integrity of another vehicle and is in furtherance of the agency's safety responsibility for the conduct of licensed activities. This requirement is comparable to that imposed on licensed launch of an expendable launch vehicle involving an upper stage that remains on orbit.

The proposal contains crew rest requirements for vehicle safety operations personnel because their performance might affect public safety. Experience has shown that crew rest criteria for those involved in supporting space operations are extremely important and would have a significant impact on organizational safety. Crew rest is of particular concern when the same crew is involved in pre-launch preparation, launch, on orbit operations, monitoring reentry-readiness, and reentry flight of the vehicle. The proposed crew rest rules are based on an NTSB investigation of an anomaly that occurred during a commercial launch from a Federal launch range and are intended to ensure RLV mission personnel readiness. The specific work and rest standards are similar to those currently used at Federal launch ranges ''Eastern and Western Range 127–1 Range Safety Requirements,'' Section 6.5.1.4 (March 31, 1995). The FAA has

not reviewed the impact the proposed crew rest standards might have on an operator intending to launch and reenter a vehicle in a short time period. The FAA invites comments from the public on the practicality and potential burden to industry of the proposed crew rest standards and also requests information regarding analogous crew rest requirements in other industries or regulated areas.

Proposed paragraph (d) establishes additional restrictions on an unproven vehicle. The projected IIP of an unproven reentry vehicle must not have substantial dwell time over a populated, as opposed to a densely populated, area during any segment of the mission unless the applicant can demonstrate that it satisfies stated risk criteria assuming the vehicle will fail while the IIP is over a populated area.

To further enhance public safety when an RLV reenters from Earth orbit, the FAA proposes under § 431.43(e) that the operator must be able to monitor the status of safety critical systems before enabling reentry and verify that the condition of the vehicle is such that it can reenter safely. The operator would also be required to issue a positive command to enable the vehicle's reentry. The FAA is aware that some RLV operators are contemplating totally autonomous reentry capability. The agency is concerned that authorizing reentry of such vehicles would not fulfill adequately its public safety responsibility. In the absence of active control, those systems and conditions determined necessary for safe reentry would not be verified before reentry is initiated and safety could be compromised. Accordingly, because of the possibility of system anomalies or other non-compliant conditions, the proposed rules require that an operator enable reentry.

Section 431.45 Mishap Investigation Plan and Emergency Response Plan

The proposal also would require that an applicant prepare a mishap investigation plan (MIP) and emergency response plan (ERP) to respond to a launch or reentry accident or incident, or unplanned event during the mission. In addition to accident investigation plan requirements applicable to launches under part 415 of the regulations, the MIP would include procedures covering the reentry phase of a mission, including immediate notification to the FAA of a mishap and procedures for minimizing damage, preserving evidence, investigating or cooperating with an investigation conducted by the FAA or NTSB, reporting investigation results, and identifying and adopting preventive measures for avoiding recurrence of the event. This requirement would be substantially similar to the requirement for a launch license applicant to submit a plan describing accident and mishap investigation and emergency response procedures for a launch accident or incident.

Also required would be emergency response plan whereby an RLV operator would be responsible for contacting local officials in the event a non-nominal reentry occurs and can be projected to impact at an identified location.

Section 431.47 Denial of Safety Approval

Under the proposal, the FAA would notify an applicant in writing if a safety approval application is denied. The notice would state the reasons for denial and allow an applicant to respond and request reconsideration. An applicant could correct the deficiencies identified in the denial and request reconsideration of the denial or, upon denial of a license, an applicant may request reconsideration.

Subpart D—Payload Reentry Review and Determination

Subpart D would explain when a payload reentry review and determination would be required and the factors considered in that review. Either an RLV mission license applicant or a payload owner or operator may apply for a payload reentry determination separately from an RLV mission license application. A license applicant could request a summary determination, if the risks to public safety posed by the payload proposed for reentry are substantially similar to a previously approved payload reentry determination issued earlier to the applicant, the payload owner or operator, or another RLV mission license applicant. For purposes of launching the payload, payload review procedures and requirements of part 415 would apply.

Section 431.51 General

The proposed section would describe the scope of an FAA payload reentry review. Payloads owned and operated by the U.S. Government or subject to the reentry authority of another Government agency, such as the Department of Commerce, would be exempt from this subpart. A payload reentry review and determination is required to address the unique safety and policy issues presented by the return to Earth of a payload that has been launched or otherwise operated in outer space. A hazardous substance may be approved for launch over water or other unpopulated area, but disapproved for reentry if the consequences of dispersion cannot be adequately contained for a planned reentry to a site on land.

Section 431.53 Classes of Payloads

The proposal would permit an applicant to request a payload determination for a type or class of payload. The applicant would describe the type or class of payload proposed for reentry under the license and general characteristics of the payload. If a payload reentry determination is issued for a class of payloads under this section, the RLV mission license applicant would have to later provide additional information regarding the specific payload before reentering it.

Section 431.55 Payload Reentry Review

Proposed § 431.55 describes how the FAA would coordinate a payload reentry review with other Government agencies, such as the Department of Defense, the Department of State, and NASA. Other agencies may include the Department of Commerce and the Federal Communications Commission. It also would describe those issues that would be addressed by the FAA in a payload reentry review. The FAA would notify an applicant of any issue raised during the payload reentry review that would impede a favorable payload reentry determination, and the applicant could respond or revise its application.

Section 431.57 Information Requirements for Payload Reentry Review

The proposal would describe the specific information that an applicant would be required to provide to the FAA to perform a payload reentry review and conduct any necessary interagency review. In cases that present potential unique safety concerns, the FAA would require considerable detail regarding the physical characteristics, functional description, and operation of the payload, and its ownership.

Section 431.59 Issuance of Payload Reentry Determination

Proposed § 431.59 would explain that the FAA issues a payload reentry determination unless policy or safety considerations prevent reentry of the payload. If an applicant were to fail to obtain a favorable payload reentry determination, the applicant could attempt to correct the deficiencies that necessitated the denial and request reconsideration of the denial or, upon

denial of an RLV mission license, the applicant could request reconsideration.

Section 431.61 Incorporation of Payload Reentry Determination in License Application

The proposal states that a favorable payload reentry determination may be included in the RLV mission license application. If, prior to a licensed mission, there is a change in the information submitted for a payload reentry determination, it is the licensee's responsibility to report the change to the FAA which may revisit its determination. The licensee must ensure that the payload owner or operator reports any such changes to the licensee so that the licensee is in compliance with the requirement.

Subpart E—Post-Licensing Requirements—Reusable Launch Vehicle Mission License Terms and Conditions

Subpart E would describe post-licensing requirements for an RLV mission licensee, including license terms and conditions.

Section 431.71 Public Safety Responsibility

Proposed paragraph (a) would state that an RLV mission licensee is responsible for ensuring a safe mission and protecting public health and safety and the safety of property at all times during the conduct of the mission.

Proposed paragraph (b) would require the licensee to conduct its operations in accordance with representations made in its license application. Failure to conduct a licensed activity in accordance with the application would be cause for the FAA to revoke the license or take other appropriate enforcement action.

Section 431.73 Continuing Accuracy of License Application; Application for Modification of License

The proposal would require a reentry licensee to ensure the continuing accuracy of representations contained in its application for the term of its license and to conduct procedures and operations in accordance with its application. An RLV mission licensee would be required to apply to the FAA for modification of the license if any representation material to public health and safety and the safety of property made in the application is no longer accurate. A license modification application would have to conform with part 413 of this chapter and indicate the part of the license or license application affected. The proposal also would state that the FAA would review its previous determinations and approvals to determine their continued validity.

Section 431.75 Agreements

The proposed rules specify a number of agreements that an RLV mission licensee must have in place before conducting licensed activities. Just as launches of expendable launch vehicles from Federal launch ranges must be conducted under an agreement between a licensed launch operator and the Federal range for the provision of U.S. Government launch property and services, so must the conduct of an RLV mission or reentry using Federal range facilities. The FAA also envisions that licensed launch site operators will, through agreements with users of its facilities, require adherence to its safety rules and requirements and such agreements must be finalized before licensed launch or reentry activity occurs at the licensed site. In either case, the terms of an agreement between the RLV mission (or reentry) licensee and the site operator (whether Federal or non-Federal) would be expected to cover, as appropriate to the flight phase being conducted at the site, preparation for licensed flight, securing the vehicle before launch and after reentry, and transporting the vehicle from the site following its reentry, because these operations must be done in a manner that does not jeopardize public health and safety. A licensee would be required to comply with any portions of an agreement that would affect public health and safety and the safety of property during the conduct of a licensed RLV mission or reentry.

Federal launch ranges coordinate Notices to Airmen and Notices to Mariners with the FAA and the U.S. Coast Guard, respectively. Consequently, there need be no additional responsibility imposed on an RLV mission or reentry licensee to issue such notices when utilizing a Federal range facility as the site of a licensed launch or reentry. In a separate rulemaking, the FAA intends to propose that a licensed launch site operator undertake responsibility for completing an agreement with the FAA and Coast Guard, respectively, for the issuance of such notices when launches are conducted at its launch site in order to assure a single point of contact. However, in the absence of such agreements, responsibility for safety coordination with regional FAA and Coast Guard offices would remain with the vehicle operator. An RLV mission (or reentry) licensee that utilizes a licensed site would be relieved of these responsibilities if issuance of notices is covered by an agreement between the licensed site operator and other modal administrations of the U.S. Department of Transportation. An RLV mission or reentry licensee authorized to conduct licensed activities at a private site, or one that is reserved for its exclusive use, would be obligated to complete such agreements. An example of an exclusive, although not private, launch and reentry site would be the lot at the Nevada Test Site authorized for use by Kistler Aerospace Corporation (Kistler) under a subpermit from the Nevada Test Site Development Corporation. Although the launch and reentry site to be utilized by Kistler are located on U.S. Government property and therefore not privately owned, the Nevada Test Site is not a Federal launch range as defined in the Commercial Space Transportation Licensing Regulations. Therefore Kistler would be responsible for completing an agreement with the appropriate FAA regional office for issuance of Notices to Airmen and compliance with other public safety measures involving air routes. Because the Nevada Test Site is an inland location, it is highly unlikely that a comparable agreement with the U.S. Coast Guard would be necessary.

Section 431.77 Records

Proposed § 431.77 would require a licensee to maintain for a period of 3 years all records, data, and other material related to a licensed RLV mission activity. In the event of a launch or reentry accident, or launch or reentry incident, the proposal would require a licensee to preserve all records related to the event until the FAA advises the licensee that the records need not be retained.

Section 431.79 Reusable Launch Vehicle Mission Reporting Requirements

Under the proposal, a licensee would be required to report certain information to the Associate Administrator at least 60 days before each RLV mission. Not later than fifteen days before a mission, a licensee would be required to report the time and date of the planned RLV mission to the Associate Administrator. The proposal also would require the immediate submission of accident, incident, and mishap information to the FAA in accordance with proposed § 431.45. The FAA invites public comment on the timeframes proposed for reporting requirements in light of operator plans for rapid RLV launch and reentry services.

Section 431.81 Financial Responsibility Requirements

Proposed § 431.81 would require a licensee to comply with financial

responsibility requirements specified in its license.

Section 431.83 Compliance Monitoring

Proposed § 431.83 explains that a licensee is required to cooperate with the FAA's compliance monitoring policy.

Section 431.85 Registration of Space Objects

Consistent with the recently issued Commercial Space Transportation Licensing Regulations, certain information must be reported to the FAA regarding placement of objects in space. Information requirements applicable to RLV missions and the associated timeframe for reporting information are consistent with those for ELV launches.

Subpart F—Environmental Review

Subpart F would set forth the FAA's environmental review requirements. Regulations contained in this subpart would be substantially similar to the environmental review regulations applicable to launch licenses under part 415, subpart G.

Section 431.91 General

Under the proposal, an applicant would be required to provide the FAA with the information necessary for the FAA to comply with applicable environmental laws and regulations, including 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; 40 CFR parts 1500–1508; and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D. The proposal also would indicate how copies of these documents could be obtained.

Section 431.93 Environmental Information

Proposed § 431.93 would require an applicant to provide the FAA with required environmental information for a reentry site and contingency abort locations, if any, and activities that may have new effects on established reentry sites. Use of a new vehicle, or reentry of a payload with characteristics falling measurably outside the parameters of existing environmental documentation, would also be subject to FAA environmental review requirements.

Part 433—License To Operate a Reentry Site

The proposal would create a new part 433 that prescribes licensing requirements and procedures applicable to operation of a reentry site. Reentry sites may offer an array of reentry services or may simply provide a secured area within which reentry may occur. Given the breadth of possibilities, and the agency's desire to allow prospective reentry site operators to develop unique proposals for operation, the FAA intends to evaluate the safety of a particular site on an individual basis. This principle appears in proposed § 433.1.

Section 433.1 General

Proposed section 433.1 reflects the principle that the FAA will evaluate on an individual basis whether an applicant is capable of safe operation of a reentry site and whether a proposed site is suitable to support reentry operations.

Section 433.3 Issuance of a License To Operate a Reentry Site

Under § 433.3, the FAA would license an operator to offer use of a reentry site if its operation does not jeopardize public health and safety, safety of property and U.S. national security and foreign policy interests. As with other licenses, the authorization granted by an FAA license would be limited to the representations contained in the licensee's application and subject to terms and conditions stated in the license.

Section 433.5 Operational Restrictions on a Reentry Site

A reentry vehicle may be authorized to reenter to a site that, among other things, satisfies within three standard deviations the probable dispersion of the vehicle upon landing. This measure of landing dispersion is known as the three-sigma footprint of a vehicle. A reentry site may be offered to support reentry of a particular reentry vehicle if the vehicle's three-sigma footprint is contained entirely within the reentry site.

Section 433.7 Environmental

Issuance of a license to operate a reentry site is a major Federal action subject to agency review under the requirements of the National Environmental Policy Act. Section 433.7 provides that an applicant shall provide sufficient information to enable the FAA to fulfill its environmental review responsibilities under Federal law and FAA procedures.

Section 433.9 Environmental Information

Although a reentry site may be covered by existing environmental documentation, its use to support licensed reentry activities and other site operations may not be adequately addressed. Section 433.9 provides that a reentry site operator must submit information to support environmental review of reentry impacts at the site, if not already covered in existing documentation.

Part 435—Reentry of a Reentry Vehicle Other Than a Reusable Launch Vehicle (RLV)

The proposal would create a new part 435 that addresses FAA's anticipation that there may be some reentries that will not involve reusable launch vehicle (RLV) technology. A COMET/METEOR type of reentry vehicle or other reentry vehicle capability that is not also an RLV may be proposed for reentry, and regulations are required to address licensing requirements applicable to those vehicles. Under the proposal, the FAA would evaluate safety aspects of reentry vehicles of this nature on an individual basis using the same three-pronged approach proposed for RLVs. The three-pronged approach consists of a risk criteria assessed on a per mission basis so that it encompasses the risks to public safety presented by the launch of a reentry vehicle in addition to its reentry, operational requirements and restrictions, and utilization of a system safety process. Compliance with that portion of regulations and licensing procedures proposed for an RLV mission that pertain to its reentry would apply to a license to reenter a reentry vehicle. Any person seeking a license to reenter a reentry vehicle should refer to part 431 regulations governing RLV missions. Only those requirements and licensing considerations that are unique to reentry of a reentry vehicle that is not also an RLV would be expressly stated in part 435.

Section 435.1 Scope

Proposed § 435.1 would establish the applicability of part 435. The proposed part would prescribe the requirements for obtaining a license to conduct a reentry of a reentry vehicle other than an RLV and any continuing requirements to remain licensed.

Section 435.3 Types of Reentry Licenses

The proposed section would identify the two types of reentry licenses that would be issued and set forth the privileges and limitations of the licenses. Under the proposal the FAA would issue either a reentry-specific or operator license, on bases comparable to that used for issuing launch.

A reentry-specific license would identify the specific missions to which it applies. An expiration date would be

stated in the license so that it is not unlimited as to time.

An operator license would authorize reentry operations on an ongoing basis, as is currently done for launch. An initial two-year license term is proposed.

Section 435.5 Policy and Safety Approvals

Under the proposal, a license applicant would be required to obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part.

Section 435.7 Payload Reentry Determinations

A payload reentry determination would be required, consistent with proposed requirements for RLV missions, for purposes of returning a payload to Earth unless it is exempt from FAA review. As with other payload determinations, a payload substantially similar to a previously approved payload may be reviewed using a comparative analysis. Under paragraph (b), a previous payload reentry determination may be used to meet the requirements of proposed paragraph (a). Proposed paragraph (c) identifies the payload review procedures applicable to reentering a payload. A payload review determination may be requested of the agency in advance of or separately from a reentry license application.

Section 435.9 Issuance of a Reentry License

The FAA would issue a license to an applicant who has obtained all approvals and determinations required under this chapter for a reentry license, including a policy and safety approval and payload reentry determination, if necessary. The authorization would be limited to representations contained in an application and subject to licensee compliance with applicable requirements of the agency.

Section 435.11 Additional License Terms and Conditions

As proposed, the FAA may amend a reentry license by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicable regulations.

Section 435.13 Transfer of a Reentry License

Consistent with other licensing authority of the agency, only the FAA would be able to transfer a reentry license. The prospective transferee would need to satisfy all requirements for obtaining a license as specified in this chapter.

Section 435.15 Rights Not Conferred by Reentry License

Proposed § 435.15 would state that the license would not relieve a licensee of its obligation to comply with applicable laws.

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

This subpart would impose requirements for a policy review consistent with those for an RLV mission license.

Section 435.21 General

Under the proposal, the FAA would issue a policy approval to a reentry license applicant upon completion of a favorable policy review; it would be part of the licensing record.

Section 435.23 Policy Review Requirements and Procedures

An applicant for reentry policy review and approval would be referred to requirements expressed in proposed part 431, subpart B concerning policy review for an RLV mission. The FAA reserves authority to impose additional requirements unique to reentry policy concerns, if any.

Subpart C—Safety Review and Approval for Reentry of Reentry Vehicle

Subpart C would describe the FAA's safety evaluation process for reentry license applicants. The safety review is conducted to ensure that all safety aspects of a proposed reentry have been adequately addressed. The safety review is necessarily based on the unique attributes and capabilities of a vehicle and is conducted on an individual basis, measured against a regulatory risk criteria.

Section 435.31 General

The proposal states that the FAA would conduct a safety review to determine whether an applicant is capable of reentering a reentry vehicle and payload, if any, to a designated site without jeopardizing public health and safety and the safety of property. The suitability of a proposed reentry site would be assessed by the FAA in the context of evaluating safety issues presented in a particular reentry proposal.

Section 435.33 Safety Review Requirements and Procedures

Safety review requirements proposed for the reentry or descent flight phase of an RLV mission would apply to the reentry safety review, unless otherwise stated in proposed subpart C of part 431.

Section 435.35 Acceptable Reentry Risk for Reentry of a Reentry Vehicle

The FAA is proposing a mission approach to assessment of reentry safety and risk. As proposed, the risk presented by a proposed reentry, in combination with the launch of the reentry vehicle into Earth orbit or outer space, must not exceed acceptable risk for an RLV mission. As indicated previously in the supplementary information of this proposed rule, the FAA requests comment on its proposed approach to combined risk.

Subpart D—Payload Reentry Review and Determination

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

Subpart F—Environmental Review

Consistent with the FAA's general approach to authorizing reentry, requirements governing payload reentry review, license terms and conditions, and environmental review for the reentry or descent phase of an RLV mission would apply to a reentry license application, unless otherwise stated in the regulations.

Paperwork Reduction Act

This proposal contains the following new information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)).

Title: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations.

Summary: The FAA proposes to amend the commercial space transportation licensing regulations by establishing operational requirements for launches of reusable launch vehicles (RLVs) and the authorized conduct of commercial space reentry activities. The proposed rule would respond to advancements in the development of commercial reentry capability and enactment of legislation extending the FAA's licensing authority to reentry activities. The agency is proposing requirements that limit risk to the public from RLV and reentry operations.

Description of Respondents: Applicants seeking licenses to conduct licensed reentry operations and launches of RLVs.

The proposed rule outlined is in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The required information will be used to determine whether applicants satisfy requirements for obtaining a launch license to protect the public

from risks associated with RLV missions and other reentries. The information to be collected includes data required for performing a safety review, which includes a technical assessment to determine if the applicant can safely reenter a reentry vehicle, including an RLV and payload, if any, to a designated reentry site without jeopardizing public health and safety and safety of property. The frequency of required submissions may depend upon the frequency of licensed launch activities; however, a license may authorize more than one launch. The estimated average burden hours per respondent are 4,384 hours.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (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 (for example, permitting electronic submission of responses). Individuals and organizations may submit comments on the information collection requirement by June 21, 1999, to the address listed in the **ADDRESSES** section of this document.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended in May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the proposed rule would generate benefits that justify its costs and is ''not a significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The proposed rule is not a significant action. The proposed rule would not have a significant impact on a substantial number of small entities and would not constitute a barrier to international trade. In addition, this proposed rule does not contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses, available in the docket, are summarized below.

Baseline for Economic Analysis

The proposed rule implements certain policies developed by AST in 1992 with respect to public safety for the first commercial space reentry operation. However, the safety criteria proposed in this rulemaking uses different measures that better reflect current agency and range safety practices. The 1992 policy established safety criteria pertaining to a unique and specific request to conduct a first-of-a-kind payload reentry mission; that is, the COMET, later renamed METEOR, reentry vehicle. Accordingly, a comprehensive regulatory (benefit-cost) analysis was not required. Therefore, the baseline case used for this analysis views the proposed rule as a new requirement imposed on an emerging segment of the commercial space transportation industry that plans to operate reusable launch vehicles (RLVs) or conduct reentry operations with reentry vehicles (RVs). Doing so implies that, but for imposition of safety requirements by the agency, some compliance costs would not have been incurred by entities planning to conduct RLV missions (launch and reentry) and RV operations that are associated with launches from Federal ranges. (Regulatory costs and benefits associated with launches from Federal ranges are assessed as part of a separate rulemaking on launch licensing requirements for launches from Federal ranges.)

Costs

The proposed rule is expected to impose a total estimated cost of $113 million ($65 million, discounted), in 1997 dollars, on the commercial space transportation industry and the FAA over the 15-year period from 2000 to 2014. Commercial space transportation industry operators potentially impacted by the proposed rule would incur approximately 27 percent (or $30 million) of this total cost estimate in the form of compliance costs. The FAA would incur about 73 percent (or $83 million) of the total cost estimate in the form of administrative costs. All monetary values shown in this regulatory evaluation summary are expressed in 1997 dollars over the 15-year period. Due to some of the operational requirements of the proposed rule, costs may materialize that have not been specifically considered in this evaluation. For example, the proposed requirement for each commercial space operator to have an independent safety inspector could, under certain circumstances, result in costs not examined in this evaluation. The independent safety inspector could require the operator to abort a launch or reentry for safety reasons, which would result in higher operating costs. Due to this additional safety oversight, it is uncertain whether all cost and benefit considerations have been captured in this evaluation. Accordingly, the FAA solicits industry comments on the extent to which this evaluation has captured critical costs associated with the proposed rule.

Reentry of RLVs and RVs are subject to comparable safety requirements and therefore regulatory costs for reentry are assessed collectively. Costs are assessed on the basis that, over the next 15-year period, five commercial operators of RLVs or RVs would be impacted by the regulations. It is assumed that five operators would obtain all necessary approvals to conduct RLV missions or RV reentries and that market demand is sufficient to support that level of vehicle operation.

Industry Compliance Costs

Section 431.25 Application Requirements for Policy Review and Section 435.23 Policy Review

These sections of the proposed rule would impose an administrative paperwork burden on each of the five anticipated commercial space industry operators potentially impacted by requiring them to provide specific policy review information to the FAA with regard to their anticipated RLV missions (launch and reentry) or RV reentry operations. Compliance with this proposed section would result in an estimated cost of $400 per operator to assemble the data and submit each application or $2,000 (5 x $400), in 1997 dollars, for all five operators over the 15-year period. The cost estimate of $400 per operator assumes an employee with an annual loaded salary of approximately $103,000 (with fringe benefits) and a level of effort of eight hours.

Section 431.33 Safety Organization and Section 435.33 Safety Review Requirements and Procedures

Under the baseline, a safety organization with clearly defined roles, responsibilities, authorities, and lines of communication is consistent with the findings and recommendations of the Rodgers Commission and National Transportation Safety Board. However, the proposed requirement to ''* * * designate a qualified safety official * * * to monitor independently compliance * * * with * * * [all] safety policies and procedures'' is not necessarily customary and usual practice. Inclusion of this proposed requirement suggests that it is a refinement of industry baseline practices designed to mitigate safety risks to the public. For example, to be ''responsible for the conduct of all * * * mission activities * * *''implies a degree of comprehensiveness that may not be common practice in industry. Because the safety official must be independent, the function cannot be assigned as a collateral duty to an individual with line responsibility for launch and reentry operations though it could conceivably be assigned to an existing employee. Furthermore, the magnitude of responsibilities of the safety official suggests that the level of effort required to perform this function would exceed part-time employment. Assuming that the independent safety official function will not be performed as a collateral duty, this proposed requirement would result in a commercial space transportation entity hiring a person to fulfill the safety official role. An annual loaded salary for this position would be about $103,000. Therefore, the total incremental compliance cost to a commercial operator attributable to the proposed requirement would be about $1.6 million or $8 million (5 × $1.6 million) for all five operators over the 15-year period.

Section 431.35 Acceptable Reusable Launch Vehicle Mission Risk, and Section 435.35 Acceptable Reentry Risk for Reentry of a Reentry Vehicle

Commercial space transportation entities are expected to incur additional costs for performance of risk analyses of vehicle operations, including reentry, and would incur costs in assessing the probabilities and consequences of all reentry hazards, events, and system failures that potentially expose the public to risk. Additionally, commercial entities would expend effort preparing documentation and establishing an associated document control system for drawings and schematics. This compliance activity is expected to fulfill the level of rigor implied by the requirements contained in the proposed rule. The cost impact to a commercial entity attributable to this proposed requirement would be approximately $757,000 in the first year of operation, with recurring costs of $3,600 annually, in 1997 dollars. Over the 15-year period, from 2000 to 2014, the cost of compliance for each potentially impacted operator would be about $800,000. The total cost of compliance for all potentially impacted operators would be approximately $4 million (5 × $800,000), over the 15-year period.

Section 431.37 Mission Readiness and Section 435.33 Safety Review Requirements and Procedures

The proposed requirement to provide specific procedures to the FAA that verify mission readiness presents an administrative paperwork burden to a commercial entity. This proposed requirement would cause an operator to incur costs for preparing and submitting the requisite information to the FAA. A knowledgeable employee having an annual salary of about $103,000 over a period of 80 hours would perform the requirement. This exercise would result in a paperwork cost to a commercial entity of approximately $4,000 per application submittal over the 15-year period. For all entities, this proposed requirement would impose an estimated cost of compliance of $20,000 (5 × $4,000) over the 15-year period.

Section 431.39 Mission Rules, Procedures, Contingency Plans, and Checklists, and Section 435.33 Safety Review Requirements and Procedures

Commercial space transportation entities are generally expected to fulfill the proposed requirements as part of their standard operating procedures. However, the FAA anticipates that these entities would incur some additional costs conforming to FAA requirements. Additionally, commercial entities are expected to incur costs from submitting updated documents with the FAA periodically, and preparing for, accommodating and reacting to FAA inspection and compliance monitoring activities. The cost impact to a single commercial space transportation entity to comply with this proposed requirement would be approximately $90,000 or $450,000 (5 × $90,000) for five entities over the 15-year period.

Section 431.41 Communications Plan and Section 435.33 Safety Review Requirements and Procedures

Commercial space transportation entities are expected to have in place a communications plan that, for the most part, are consistent with proposed regulatory requirement as a matter of standard business practice. However, they are expected to incur incremental costs complying with the requirement, annual recurring costs from interfacing and exchanging documents with the FAA periodically and preparing for, accommodating, and reacting to FAA inspection and compliance monitoring activities. The cost impact to a single commercial space transportation entity to comply would be approximately $90,000 or $450,000 for all five entities over the 15-year period.

Section 431.43 Reusable Launch Vehicle Mission Operational Requirements and Restrictions, and Section 435.33 Safety Review Requirements and Procedures

(Mission Operational Requirements: Dwell Time)

Commercial space transportation entities are expected to expend additional levels of effort to comply with risk mitigation requirements that, to some extent, may limit vehicle flight path options during nominal and non-nominal operations, specifically limitations on dwell time over populated areas and requirements for performing a collision avoidance analysis during launch windows to maintain adequate separation from orbiting objects.

(Rest and Duty Restrictions)

This proposed rule would impose work restrictions and personnel rest requirements on commercial space transportation entities potentially impacted by this action. For example, an individual having direct control over reentry or involved in decisions affecting reentry operations is restricted to working 60 hours over the seven-day period preceding reentry. Further, the proposed rule would reduce the maximum permissible hours worked per shift to 12, limits the maximum number of consecutive workdays to 14, and specifies the minimum rest required (48 hours) between five consecutive days of 12-hour work shifts.

Currently, based on information received from industry, it is common practice among commercial space transportation entities to follow Air Force work and rest standards for launches. Those standards are similar to the proposed requirements. Ordinarily,

based on industry information, launch mission operations personnel work less than the maximum currently permissible, such as a 40-hour workweek comprised of five eight-hour shifts. Hence, the 72-hour workweek is generally an extreme condition that occurs infrequently.

The duration of a reentry operation is likely to determine the extent of the impact that the proposed work and rest requirements would have on commercial space transportation entities. However, this impact would occur under extreme or limiting conditions only (e.g., one reentry operations person).

Given the relatively small size of the entities comprising the emerging RLV segment of the commercial space transportation industry, staff augmentation of at least one person is not unlikely as a result of the proposed requirements. Additionally, the FAA anticipates that additional costs would be incurred for recordkeeping to ensure compliance with required work and rest standards, and preparing for, accommodating, and reacting to FAA inspection and monitoring activities.

The incremental cost to a single commercial entity to comply with this proposed work and rest requirement would be slightly more than $3 million over the 15-year period. Over this same period, for all five entities, the cost of compliance would be $16 million ($5 × $3.2 million).

Section 431.45 Mishap Investigation Plan and Emergency Response Plan, and Section 435.33 Safety Review Requirements and Procedures

As a matter of standard business practice, commercial entities are expected to have prepared emergency response plans that are consistent with much of the regulatory requirement. However, the FAA anticipates that these plans would require additional annual maintenance to comply with certain elements of the proposed rule. For example, entities are likely to incur additional costs to establish their ability to successfully respond to accidents occurring in remote areas having sparse populations. Furthermore, additional annual maintenance costs are expected to arise from preparing for, accommodating, and reacting to FAA inspection and monitoring activities. Accordingly, a commercial space transportation entity would incur incremental costs of $542,000 or $2.7 million (5 × $542,000) for all five entities over the 15-year period.

Section 431.57 Information Requirements for Payload Reentry Review and Section 435.43 Payload Reentry Review Requirements and Procedures

This proposed requirement to provide specific payload information to the FAA presents an administrative paperwork burden to a commercial entity. The submission of data to the FAA is estimated to impose costs of $400 per application or $2,000 for all five entities over the 15-year period.

Section 431.73 Continuing Accuracy of License Application; Application for Modification of License

The proposed requirement would impose minor costs on a licensee to advise the FAA of material changes to its application, and RLV and reentry missions that may impact public safety and property. Depending upon the types of changes reported, it is assumed based on input received from FAA and industry technical personnel that, on average, a licensee would incur incremental compliance costs of approximately $33,000 per modification application or $165,000 (5 × $33,000) for five entities over the 15-year period.

Section 431.75 Agreements, and Section 435.51 Post Licensing Requirements—Reentry License Terms and Conditions (General)

Entities that conduct commercial launches of ELVs from Federal ranges must enter into formal agreements with the Federal range authority prior to using such facilities. Entities planning to use these same facilities for reentry missions would also be required to enter into such agreements. The proposed requirement has no impact on commercial entities other than the negligible level of effort expended (e.g., less than one hour) to advise the FAA of compliance, and the incremental cost to industry to comply with this requirement would be negligible.

Section 431.77 Records and Section 435.51 Post Licensing Requirements—Reentry License Terms and Conditions (General)

It is generally accepted practice among all commercial concerns to maintain business operations records for some period of time, often more than three years. Furthermore, the availability and capability of electronic storage systems renders records retention a manageable task. Accordingly, the proposed three-year requirement to maintain records for FAA review, upon request, would not impact commercial space transportation entities. From a worst case perspective, this evaluation assumes the FAA would exercise its record request authority. As a result the cost of compliance is expected to be about $400 per entity per year. Over the 15-year period, the cost would be $6,000 (400 × 15) per entity or $30,000 (5 × $6,000) for five entities.

Section 431.79 Reusable Launch Vehicle Mission Reporting Requirements, and Section 435.51 Post Licensing Requirements—Reentry License Terms and Conditions (General)

The information to be supplied by a licensee under this proposed requirement is similar to that supplied previously to the FAA during the application process in accordance with Section 431.57. The burden placed on the licensee is to provide more specific mission data than that supplied previously but closer in time to the actual conduct of the mission. Because an operator must have this data to perform a scheduled mission, the incremental cost to industry to comply with this proposed requirement would be zero.

Section 431.93 Environmental Information, and Section 435.61 Environmental Review (General)

Because licensing is a major Federal action, a commercial space transportation entity would be required to provide information addressing the environmental effects of its operations so that the agency can fulfil its responsibility under NEPA and CEQ environmental regulations, even in the absence of the proposed rule. Commercial entities planning to conduct launch and reentry missions must submit environmental assessment data to the FAA regarding environmental impacts of its proposed activities. Additional information must be submitted to evaluate environmental effects not previously assessed by the agency. This proposed requirement would cause a commercial entity to incur incremental compliance costs of $271,000 per entity or $1.4 million (5 × $271,000) for five entities over the 15-year period.

Section 433.7 Environmental

An analysis of the environmental impacts of operating a reentry site is required under NEPA. The proposed requirement, as distinct from similar requirements for operation of a launch site, would cause a applicant to incur incremental compliance costs of $162,000 over the 15-year period as a result of the need to submit additional information to the agency to evaluate environmental effects not previously assessed by the agency. For all

operators, the cost of compliance would be about $800,000 over the same period.

FAA Administrative Costs

The proposed rule would result in the FAA expending great effort in evaluating RLV mission and reentry license applications and monitoring licensees for compliance.

This evaluation estimates that the FAA would incur costs of approximately $83 million ($45 million, discounted), 1997 dollars over the 15-year period, as the result of administering its review of license applications and monitoring of licensees compliance in accordance with the proposed requirements of certain sections of parts 431, 433, and 435.

The FAA's actual experience in evaluating an application to conduct a reentry mission is limited to the COMET and METEOR programs. Much of the proposed rule reflects safety policies for reentry developed by the agency in 1992 to ensure that the COMET/METEOR payload reentry missions would not jeopardize public health and safety and health and the safety of property. Consequently, this experience provides a partial basis for establishing the costs to the FAA for administering the proposed rule. Using this past experience, AST expects that the costs to be incurred in performing its RLV mission and reentry licensing pre-application consultation, application evaluation, and compliance monitoring duties in the near term to be higher than that incurred for COMET/METEOR for a single application, with or without a formal reentry licensing regulation. The extent to which such costs would be higher than that incurred for COMET/METEOR is unknown since there is no history of U.S. commercial reentry activity. The assessment of higher application costs, however, is largely due to the expectation that inherently more complex RLV programs would dominate reentry missions in the future and initially these would require greater evaluative effort on the part of FAA personnel until they have developed experience in this area. While AST budget estimates for fiscal year 2000 reflect additional funding needed to exercise its reentry mission approval function, this need cannot be attributed to the proposed rule, but rather to the complexity associated with the advancing technology that would be evaluated.

AST fiscal year 2000 budget estimates of the cost to perform its pre-application consultation and application evaluation licensing responsibilities may be correlated collectively to sections 431.23, 431.27, 431.31, 431.47, 431.55, 431.59, and 431.91; 433.3, 433.9; and 435.23, 435.31, 435.43, and 435.61 of the proposed regulation. The costs to be incurred by the FAA to implement its compliance monitoring responsibilities corresponding to sections 431.73, 431.83, and 435.51 can vary widely, as the spectrum of changes to reentry program operations can range from minor to major. Therefore, the FAA expects to spend $2.5 million—an amount equivalent to that expended for COMET/METEOR—to implement and administer these proposed requirements for a single application.

Based on projections of the level of application activity over the 15-year period from 2000 to 2014, the FAA is expected to spend approximately $83 million in administering the safety requirements of parts 431, 433, and 435. Approximately 94 percent (or $78 million) of the cost by the FAA to administer these parts would be incurred to approve the projected reentry license applications and modifications to be evaluated over the 15-year period. Approximately 6 percent (or $5 million) of the cost to administer parts 431, 433, and 435 would be expended on the review of application denials and the reconsideration process.

Unlike the estimates for potential benefits, the costs section of this evaluation uses a point (or single) estimate rather than a range. The point estimate approach was chosen in estimating FAA administrative costs because, due in large measure to the agency's experience with the COMET/METEOR Program, there is far less uncertainty associated with the estimation of costs for this proposed rule relative to benefits.

Benefits

The proposed rule is expected to generate safety benefits of $119 million ($66 million, discounted), in 1997 dollars, over the 15-year period. Benefits include enhanced safety by limiting reentry risk to a level that does not exceed an expected average number of 30 casualties per one million RLV missions or reentries for the general public, and an expected average number of no more than one casualty per million missions for the public in the vicinity of reentry sites.

The potential safety benefits that are expected to accrue as the result of this proposed rule stem from two types of safety criteria implemented and administered by the FAA on commercial space transportation industry operators who wish to engage in RLV missions or reentries. The two criteria are:

(1) $E_c \leq 30 \times 10^{-6}$. This criterion applies on a per mission basis and includes both launch and reentry phases of an RLV mission. It requires that the risk to the public associated with each mission incorporate a level of safety that is equivalent to a probabilistic outcome of no more than an expected average number of 30 public casualties per one million missions.

(2) $E_c \leq 1 \times 10^{-6}$. This criterion pertains to the public adjacent to reentry sites. It requires that the risk to the public associated with each reentry mission incorporate a level of safety that is equivalent to a probabilistic outcome of no more than an expected average number of one public casualty per one million missions.

Compliance by operators with these safety criteria, along with other restrictions addressed in the proposed rule are intended to limit risk to public safety. In estimating these potential safety benefits, the FAA employed the following steps: (First), the agency examined six accident types, grouped into two categories, related to airborne explosions and ground point-of-impact crashes. (For the purpose of this evaluation, the term accident is defined as any unplanned event with potential casualty losses). For each accident category—airborne or ground—the population density of the area surrounding the accident scene or accident zone can be either (1) none, (2) sparse (e.g. rural), or (3) dense (e.g., urban). An examination of the consequences of these types of accidents was conducted. To arrive at accident consequences, the accident scenes or zones for airborne and ground accidents are characterized in terms of fatalities, injuries, and property damage under the baseline and the proposed rule. The difference between the baseline scenario and proposed rule scenario represents the incremental safety benefits that would be generated by the proposed rule. This process was performed for each of the steps below: (Second), monetary values are assigned to each of the various types of accidents expected to occur during launch or reentry (including accidents at or near launch sites). (Third), probabilities are assigned to each of the six accident types based on the percentage of impacted landmass (e.g., no population, sparse population, and dense population) for the baseline and the proposed rule. That is, the probability of occurrence for each accident type over the next 15 years was determined by using the two types of risk criteria mentioned earlier.

And last, expected values were estimated for each of the accident types under the baseline and the proposed

rule. For this proposed rule, the expected benefit values represent the difference between these two scenarios. One of the more difficult areas to ascertain is the probability of a reusable launch vehicle (RLV) or RLV accident in the absence of government regulation in order to calculate the expected value of an accident under the baseline and estimate the incremental safety benefits of the proposed rule. This difficulty stems from the fact there is no empirical evidence or historical RLV accident history. Because of this difficulty, there is uncertainty associated with estimating the probability of an RLV or RLV accident. As a result of this uncertainty, the FAA estimated a range of accident probabilities, which are based on historical experience with ELV accidents and incidents, and sorted them into six categories or types of accidents. In estimating the expected casualty and property loss values, the probability of each of the six accident types is multiplied by the accident consequence values (e.g., the cost of an accident). This process was repeated for all six accident types and summed. This procedure was done for both scenarios (baseline and proposal). Thus, the difference in casualty and property losses for these two scenarios was used as the estimated benefits for this proposed rule. The results of these calculations generate the potential safety benefits as discussed below.

Safety benefits—accident costs avoided—are realized as RLV launch and reentry operations are performed, without incident. Therefore, the number of completed RLV missions and reentries projected over the 15-year period is multiplied by incremental safety benefits per mission to estimate total incremental safety benefits over the period 2000 to 2014. The total safety benefit resulting from the proposed rule is estimated to be $119 million for the period 2000 to 2014. This estimate of $119 million represents the midpoint of benefits ranging from $22 million to $217 million over the 15-year period. This midpoint estimate of benefits was chosen because of the high degree of uncertainty associated with the wide range of accident probabilities. Uncertainty stems from the extent to which industry has already adopted and implemented safety measures similar to those proposed as part of this rulemaking action. (Based on information obtained from commercial space industry technical personnel, nearly all of the potentially impacted operators would be in compliance with the proposed rule to some degree.) The low end of the range of benefits assumes that practically all of the potentially impacted operators would be in almost complete compliance in the absence of the proposed rule. The high end of the range of benefits assumes the opposite. There is insufficient information that would support adopting the benefits estimates at either end of the range. Thus, the median (or midpoint) was chosen as an appropriate benefits estimate. It suggests that the actual benefits to be generated by the proposed rule lies somewhere between the lower and upper end of this range. Since uncertainty is associated with using a midpoint benefits estimate and range of benefits, the FAA solicits public comment as to whether its assumptions are appropriate and the validity of this approach. The agency asks that comments be specific and supported by quantitative data wherever possible.

Secondary Benefits

The proposed rule would generate secondary benefits in the form of enhanced operational efficiency, due largely to regulatory and procedural clarifications that would be facilitated by the iterative pre-application consultation process, help ensure consistency in implementing the licensing process, and may result in cost-savings to the FAA as a result of repetitive operations. These cost-savings would also reduce the turnaround time between application submittal and licensing approval, help commercial space transportation entities gain familiarity with requirements, and facilitate government-industry interaction. Enhanced operational efficiency, in turn, would lead to industry cost-savings, possibly due to less rework or paperwork avoided.

Summary of Total Costs and Benefits

The total potential benefits and costs of this proposed rule are shown below in Table 1. This Table shows that the potential cost imposed by the proposed rule would be approximately $113 million over the 15-year period. Also shown in Table 1, about $30 million of this total cost would be incurred by industry. The cost estimate of $30 million is lower than the summation of those costs discussed in the above sections for industry because it takes into account the fact that certain operators would incur recurring costs for some of the 15-year period rather than for the entire period. Table 1 also shows that the proposed rule would generate potential safety benefits of $119 million over the 15-year period. Due to some of the operational requirements of the proposed rule, costs and benefits not considered in this evaluation may materialize. The FAA solicits comments from the commercial space industry as to what extent this evaluation has captured critical costs and benefits associated with the proposed rule.

TABLE 1.—SUMMARY OF TOTAL COSTS AND BENEFITS

[In millions of dollars]

Category (in 1997 dollars, 15 yrs.)	Undiscounted	Discounted
Commercial Space Transportation Industry Compliance Costs	$30	$20
Federal Aviation Administration Implementation Costs	83	45
Total Costs	113	65
Accident Costs Avoided: Lower Bound (Safety Benefits)	22	12
Accident Costs Avoided: Upper Bound (Safety Benefits)	217	121
Total Accident Costs Avoided: Midpoint (Safety Benefits)	119	66

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (e.g., small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal Government regulations. The RFA, which was amended in March 1996, requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis be performed if the proposed rule would

have a significant economic impact on a substantial number of small entities. The regulatory flexibility analysis must (1) identify the economic impact on small entities and (2) consider alternatives that may lessen those impacts.

The Small Business Administration has defined small business entities relating to space vehicles (Standard Industrial Codes 3761, 3764, and 3769) as entities comprising fewer than 1,000 employees. The FAA has determined that the proposed rule would impact five small businesses, imposing on an entity average compliance costs of approximately $6 million over the 15-year period (in 1997 dollars).

The annualized compliance cost to each small business is approximately $700,000 (in 1997 dollars). Ordinarily, this section of the evaluation would be based on typical financial data (for example, annual net income or losses) as a means to determine any of the commercial space transportation small entities significantly impacted by the proposed rule. However, the traditional use of such financial data for these small entities cannot be employed since RLV operators (including a number of RV operators) represent relatively new companies and they have no revenue history. In fact, these small operators are in the process of raising funds to finance their new ventures. Due to the lack of data on the financial characteristics of these small RLV operators, this evaluation uses the 1998 average revenue received per launch for ELV operators. The revenue that RLV operators would obtain from their customers is expected to be similar to the revenue that established ELV operators currently receive from their customers. Revenue data based on ELV operators' experience would be used for the purpose of assessing the extent to which compliance with the proposed rule would impose significant economic impacts on each of the five potentially impacted small RLV operators. This assessment would be done by comparing the annualized cost of compliance to the annual average revenue expected to be received by each of the five small RLV operators over the next 15 years. While the long-term revenues of RLV operators are expected to exceed those of ELV operators, which would be due to inherent lower operating costs, for the purpose of this evaluation they are assumed to be nearly the same over the 15-year period. For this reason, the average revenue of about $50 million generated by each ELV launch in 1998 will be used as an indicator of what RLV operators would be expected to generate per RLV mission in future years. This assessment is based primarily on information received for orbital launch events for ELV operators from the FAA's Office of Commercial Space Transportation Report entitled, ''Commercial Space Transportation: 1998 Year In Review'', Table 1 and the Appendix (January 1999).

Each of the five potentially impacted small RLV entities is expected to average about seven missions per year over the next 15 years. Using $50 million as an average expected revenue per mission, each entity would be expected to receive about $350 million in revenue ($50m × 7 missions annually) for all missions annually. The FAA has determined that none of the five small entities would incur a significant economic impact, since the average annualized cost of compliance ($700,000) would be only 0.2 percent of the anticipated average annual revenues of $350 for missions conducted annually.

The FAA certifies that the proposed rule would not impose a significant economic impact on a substantial number of small businesses. Therefore, a regulatory flexibility analysis is not required. Furthermore, the proposed rule is not likely to cause small business failures or adversely impact their competitive position relative to larger businesses. However, the FAA requests comments on the validity of the assertions herein and additional information on the financial characteristics of these small businesses

International Trade Impact Assessment

The proposed rule contains revisions to commercial space transportation licensing regulations that would not constitute a barrier to international trade, including the export of domestic goods and services out of the United States. The proposed rule would equally affect domestic and foreign organizations conducting commercial space transportation operations within the United States. The proposed rule is not expected to place domestic firms at a disadvantage with respect to foreign interests competing for similar business in international markets. Therefore, based on this evaluation and impacts reported herein, the proposed rule is not expected to affect trade opportunities for U.S. firms doing business abroad or for foreign firms doing business in the United States. The FAA invites comments on the validity of this assertion and any potential impacts related thereto.

Unfunded Mandates Act of 1995 Assessment

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate 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, Title 2 of the United States Code 1534(a), requires the Federal agency to develop an effectiveness process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A significant intergovernmental mandate under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, Title 2 of the United States Code 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 any affected small governments to provide input in the development of proposed rules.

Based on the evaluation and impacts reported herein, the proposed rule is not expected to meet the $100 million per year cost threshold. Consequently, it would not impose a significant cost on uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to the proposed regulation.

Federalism Implications

The regulations proposed herein will not have a substantial direct effect 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.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(i), regulatory documents which cover administrative or procedural requirements qualify for a categorical exclusion. Proposed sections 431.91, 431.93, 433.7, and 433.9 would require an applicant to submit sufficient environmental information for the FAA to comply with NEPA and other applicable environmental laws and regulations during the processing of each license application. Accordingly, the FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from finalization or implementation of its administrative provisions for licensing.

List of Subjects

14 CFR Part 400

Space transportation and exploration.

14 CFR Part 401

Organization and functions (Government agencies), Space transportation and exploration.

14 CFR Part 404

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 405

Investigations, Penalties, Space transportation and exploration.

14 CFR Part 406

Administrative practice and procedure, Space transportation and exploration.

14 CFR Part 413

Confidential business information, Space transportation and exploration.

14 CFR Part 415

Aviation safety, Environmental protection, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

14 CFR Part 433

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

14 CFR Part 435

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 400, 401, 404, 405, 406, 413, and 415, of Chapter III Title 14, Code of Federal Regulations and add parts 431, 433 and 435 as follows:

PART 400—BASIS AND SCOPE

1. The authority citation for part 400 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

2. Section 400.2 is revised to read as follows:

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision under 49 U.S.C. Subtitle IX, chapter 701, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to exempted-class rocket activities.

PART 401—ORGANIZATION AND DEFINITIONS

3. The authority citation for part 401 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

4. Section 401.5 is revised to read as follows:

§ 401.5 Definitions.

As used in this chapter—

Act means 49 U.S.C. Subtitle IX, Commercial Space Transportation, ch. 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70121.

Amateur rocket activities means launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—i.e., gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

Associate Administrator means the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, or any person designated by the Associate Administrator to exercise the authority or discharge the responsibilities of the Associate Administrator.

Contingency abort means cessation of vehicle flight during ascent or descent in a manner that does not jeopardize public health and safety and the safety of property, in accordance with mission rules and procedures. Contingency abort includes landing at an alternative location that has been designated as a contingency abort location in advance of vehicle flight.

Emergency abort means cessation of vehicle flight during ascent or descent in a manner that minimizes risk to public health and safety and the safety of property. Emergency abort involves failure of a vehicle, safety-critical system, or flight safety system such that contingency abort is not possible.

Federal launch range means a launch site, from which launches routinely take place, that is owned and operated by the government of the United States.

Flight safety system means a system designed to limit or restrict the hazards to public health and safety and the safety of property presented by a launch vehicle or reentry vehicle while in flight by initiating and accomplishing a controlled ending to vehicle flight. A flight safety system may be destructive resulting in intentional break up of a vehicle or nondestructive, such as engine thrust termination enabling vehicle landing or safe abort capability.

Hazardous materials means hazardous materials as defined in 49 CFR 172.101.

Launch means to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes activities involved in the preparation of a launch vehicle for flight, when those activities take place at a launch site in the United States. The term launch includes the flight of a launch vehicle and pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site. Flight ends after the licensee's last exercise of control over its launch vehicle.

Launch accident means:

(1) A fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the flight;

(2) Any damage estimated to exceed $25,000 to property not associated with the flight that is not located at the launch site or designated recovery area.

(3) An unplanned event occurring during the flight of a launch vehicle resulting in the known impact of a launch vehicle, its payload or any component thereof:

(i) For an expendable launch vehicle (ELV), outside designated impact limit lines; and

(ii) for an RLV, outside a designated landing site.

Launch incident means an unplanned event occurring during the flight of a launch vehicle, other than a launch accident, involving a malfunction of a flight safety system or safety-critical system or failure of the licensee's safety organization, design or operations.

Launch operator means a person who conducts or who will conduct the launch of a launch vehicle and any payload.

Launch site means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities at that location.

Launch vehicle means a vehicle built to operate in, or place a payload in, outer space or a suborbital rocket.

Mishap means a launch or reentry accident, launch or reentry incident, failure to complete a launch or reentry as planned, or an unplanned event or series of events resulting in a fatality or serious injury (as defined in 49 CFR § 830.2), or resulting in greater than $25,000 worth of damage to a payload, a vehicle, a launch or reentry support facility or government property located on the launch or reentry site.

Operation of a launch site means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads.

Operation of a reentry site means the conduct of safety operations at a fixed site on Earth at which a reentry vehicle and its payload, if any, is intended to land.

Payload means an object that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

Person means an individual or an entity organized or existing under the laws of a state or country.

Reenter means to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth. The term ''reenter'' includes activities conducted in Earth orbit or outer space to determine reentry readiness and are therefore unique to reentry and critical to ensuring public health and safety and the safety of property during reentry.

Reentry accident means any unplanned event occurring during the reentry of a reentry vehicle resulting in the known impact of the reentry vehicle, its payload, or any component thereof outside a designated reentry site; a fatality or serious injury (as defined in 49 CFR 830.2) to any person who is not associated with the reentry; or any damage estimated to exceed $25,000 to property not associated with the reentry and not located within a designated reentry site.

Reentry incident means any unplanned event occurring during the reentry of a reentry vehicle, other than a reentry accident, involving a malfunction of a reentry safety-critical system or failure of the licensee's safety organization, procedures, or operations.

Reentry operator means a person responsible for conducting the reentry of a reentry vehicle as specified in a license issued by the FAA.

Reentry site means the location on Earth where a reentry vehicle is intended to return. It includes the area within three standard deviations of the intended landing point (the predicted three-sigma footprint).

Reentry vehicle means a vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reusable launch vehicle that is designed to return from Earth orbit or outer space to Earth substantially intact is a reentry vehicle.

Reusable launch vehicle (RLV) means a launch vehicle that is designed to return to Earth substantially intact and therefore may be launched more than one time or that contains vehicle stages that may be recovered by a launch operator for future use in the operation of a substantially similar launch vehicle.

Safety-critical means essential to safe performance or operation. A safety-critical system, subsystem, condition, event, operation, process or item is one whose proper recognition, control, performance or tolerance is essential to safe system operation.

Vehicle safety operations personnel means those persons whose job performance is critical to public health and safety or the safety of property during RLV or reentry operations.

State and United States means, when used in a geographical sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

United States citizen means:

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and

(3) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraph (1) or (2) of this definition. *Controlling interest* means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraph (1) or (2) of this definition creates a rebuttable presumption that such interest is controlling.

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

5. The authority citation for part 404 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

6. Section 404.1 is revised to read as follows:

§ 404.1 Scope.

Under section 49 U.S.C. 70105, this part establishes procedures for issuing regulations to implement the provisions of 49 U.S.C. Subtitle IX, chapter 701, and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space transportation activities under 49 U.S.C. Subtitle IX, chapter 701.

7. Section 404.3 is amended by revising the section title and paragraph (a) to read as follows:

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to issue, amend, or repeal a regulation to eliminate as a requirement for a license any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites or to waive any such requirement in the context of a specific application for a license.

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PART 405—INVESTIGATIONS AND ENFORCEMENT

8. The authority citation for part 405 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

9. Section 405.1 is revised to read as follows:

§ 405.1 Monitoring of licensed and other activities.

Each licensee must allow access by and cooperate with Federal officers or employees or other individuals authorized by the Associate Administrator to observe licensed

facilities and activities, including launch sites and reentry sites, as well as manufacturing, production, and testing facilities, or assembly sites used by any contractor or a licensee in the production, assembly, or testing of a launch or reentry vehicle and in the integration of a payload with its launch or reentry vehicle. Observations are conducted to monitor the activities of the licensee or contractor at such time and to such extent as the Associate Administrator considers reasonable and necessary to determine compliance with the license or to perform the Associate Administrator's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

10. Section 405.5 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 405.5 Emergency orders.

The Associate Administrator may immediately terminate, prohibit, or suspend a licensed launch, reentry, or operation of a launch or reentry site if the Associate Administrator determines that—

(a) The licensed launch, reentry, or operation of a launch or reentry site is detrimental to public health and safety, the safety of property, or any national security or foreign policy interest of the United States; and

* * * * *

PART 406—ADMINISTRATIVE REVIEW

11. The authority citation for part 406 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

12. Section 406.1 is amended by revising paragraphs (a), introductory text, (a)(2), and (a)(3) to read as follows:

§ 406.1 Hearings.

(a) Pursuant to 49 U.S.C. 70110, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with 5 U.S.C. 554.

* * * * *

(2) An owner or operator of a payload regarding any decision to prevent the launch or reentry of the payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license or to terminate, prohibit, or suspend any licensed activity; and

* * * * *

PART 413—LICENSE APPLICATION PROCEDURES

13. The authority citation for part 413 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

14. Section 413.1 is revised to read as follows:

§ 413.1 Scope.

This part prescribes the procedures applicable to applications submitted under this chapter to conduct licensed activities. These procedures apply to all applications for issuance of a license, transfer of an existing license, and renewal of an existing license. More specific requirements applicable to obtaining a launch license or a license to operate a launch site are contained in parts 415 and 417 of this chapter, respectively. More specific requirements applicable to obtaining a license to launch and reenter a reentry vehicle or to operate a reentry site are contained in parts 431, 433 and 435 of this chapter, respectively.

5. Section 413.3 is revised to read as follows:

§ 413.3 Who must obtain a license.

(a) A person must obtain a license—

(1) To launch a launch vehicle from the United States;

(2) To operate a launch site within the United States;

(3) To reenter a reentry vehicle in the United States; or

(4) To operate a reentry site within the United States.

(b) An individual who is a U.S. citizen or an entity organized under the laws of the United States or any State must obtain a license—

(1) To launch a launch vehicle outside the United States;

(2) To operate a launch site outside of the United States;

(3) To reenter a reentry vehicle outside of the United States; or

(4) To operate a reentry site outside of the United States.

(c) A foreign entity in which a United States citizen has a controlling interest, as defined in § 401.5 of this chapter, must obtain a launch license to launch a launch vehicle from or a license to operate a launch site within—

(1) Any place that is both outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the launch or the operation of the launch site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the launch or the operation of the launch site.

(d) A foreign entity in which a U.S. citizen has a controlling interest, as defined in § 401.5 of this chapter, must obtain a license to reenter a reentry vehicle or to operate a reentry site in—

(1) Any place that is outside the United States and outside the territory of any foreign nation, unless there is an agreement in force between the United States and a foreign nation providing that such foreign nation shall exercise jurisdiction over the reentry or the operation of the reentry site; or

(2) The territory of any foreign nation if there is an agreement in force between the United States and that foreign nation providing that the United States shall exercise jurisdiction over the reentry or the operation of the reentry site.

PART 415—LAUNCH LICENSE

16. The authority citation for part 415 is revised to read as follows:

Authority: 49 U.S.C. 70101–70121.

17. Section 415.1 is revised to read as follows:

§ 415.1 Scope.

This part prescribes requirements for obtaining a license to launch a launch vehicle, other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee shall comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter. Requirements for obtaining a license to launch an RLV and conduct an RLV mission are contained in part 431 of this subchapter.

18. Part 431 is added to read as follows:

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

Subpart A—General

Sec.
431.1 Scope.
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Authority: 49 U.S.C. 70101–70119.

Subpart A—General

§ 431.1 Scope.

This part prescribes requirements for obtaining a reusable launch vehicle (RLV) mission license and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§ 431.3 Types of reusable launch vehicle mission licenses.

(a) *Mission-specific license.* A mission-specific license authorizing an RLV mission, authorizes a licensee to launch and reenter, or otherwise land, one model or type of RLV to a reentry site approved for the mission. A mission-specific license authorizing an RLV mission may authorize more than one RLV mission and identifies each flight of an RLV authorized under the license. A licensee's authorization to conduct RLV missions terminates upon completion of all activities authorized by the license or the expiration date stated in the reentry license, whichever occurs first.

(b) *Operator license.* An operator license for RLV missions authorizes a licensee to launch and reenter, or otherwise land, any of a designated family of RLVs within authorized parameters, including trajectories, transporting specified classes of payloads to any reentry site designated in the license. An operator license for RLV missions is valid for a two-year renewable term.

§ 431.5 Policy and safety approvals.

To obtain either type of RLV mission license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part. Only the license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 431.7 Payload and payload reentry determinations.

(a) A payload determination is required to launch a payload unless the proposed payload is exempt from payload review under § 415.53 of this chapter. Requirements for obtaining a payload determination are set forth in part 415, subpart D.

(b) A payload reentry determination is required to transport a payload to Earth on an RLV unless the proposed payload is exempt from payload review.

(c) A payload reentry determination made under a previous license application under this subchapter may satisfy the requirements of paragraph (b) of this section.

(d) The FAA conducts a review, as described in subpart D of this part, to make a payload reentry determination. Either an RLV mission license applicant or a payload owner or operator may request a review of the proposed payload using the application procedures contained in part 413 of this subchapter. Upon receipt of an application, the FAA may conduct a payload reentry review independently of an RLV mission license application.

§ 431.9 Issuance of a reusable launch vehicle mission license.

(a) The FAA issues either a mission-specific or operator license authorizing RLV missions to an applicant who has obtained all approvals and determinations required under this chapter for the license.

(b) An RLV mission license authorizes a licensee to launch and reenter, or otherwise land, an RLV and payload, if any, in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the license, including financial responsibility requirements.

§ 431.11 Additional license terms and conditions.

The FAA may amend an RLV mission license at any time by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. subtitle IX, chapter 701, and applicable regulations.

§ 431.13 Transfer of a reusable launch vehicle mission license.

(a) Only the FAA may transfer an RLV mission license.

(b) An applicant for transfer of an RLV mission license shall submit a license application in accordance with part 413 of this subchapter and satisfy the applicable requirements of this part. The FAA will transfer an RLV mission license to an applicant who has obtained all of the approvals and determinations required under this chapter for an RLV mission license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate any findings made part of the record to support the initial licensing determination. The FAA may modify an RLV mission license to reflect any changes necessary as a result of a license transfer.

§ 431.15 Rights not conferred by a reusable launch vehicle mission license.

Issuance of an RLV mission license does not relieve a licensee of its obligation to comply with requirements of law that may apply to its activities.

§§ 431.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

§ 431.21 General.

The FAA issues a policy approval to an RLV mission license applicant upon completion of a favorable policy review. A policy approval is part of the licensing record on which the licensing determination is based.

§ 431.23 Policy review.

(a) The FAA reviews an RLV mission license application to determine

whether the proposed mission presents any issues, other than those issues addressed in the safety review, that would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States.

(b) *Interagency consultation.*

(1) The FAA consults with the Department of Defense to determine whether an RLV mission license application presents any issues adversely affecting U.S. national security.

(2) The FAA consults with the Department of State to determine whether an RLV mission license application presents any issues adversely affecting U.S. foreign policy interests or international obligations.

(3) The FAA consults with other Federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section, associated with an applicant's RLV mission proposal.

(c) The FAA advises an applicant, in writing, of any issue raised during a policy review that would impede issuance of a policy approval. The applicant may respond, in writing, or revise its license application.

§ 431.25 Application requirements for policy review.

In its RLV mission license application, an applicant must—

(a) Identify the model, type, and configuration of any RLV proposed for launch and reentry, or otherwise landing on Earth, by the applicant.

(b) Identify all vehicle systems, including structural, thermal, pneumatic, propulsion, electrical, and avionics and guidance systems used in the vehicle(s), and all propellants.

(c) Identify foreign ownership of the applicant as follows:

(1) For a sole proprietorship or partnership, identify all foreign ownership;

(2) For a corporation, identify any foreign ownership interests of 10% or more; and

(3) For a joint venture, association, or other entity, identify any participating foreign entities.

(d) Identify proposed launch and reentry flight profile(s), including—

(1) Launch and reentry site(s), including planned contingency abort locations, if any;

(2) Flight trajectories, reentry trajectories, associated ground tracks, and instantaneous impact points for nominal operations, and contingency abort profiles, if any;

(3) Sequence of planned events or maneuvers during the mission; and

For an orbital mission, the range of intermediate and final orbits of the vehicle and upper stages, if any, and their estimated orbital life times.

§ 431.27 Denial of policy approval.

The FAA notifies an applicant, in writing, if the FAA has denied policy approval for an RLV mission license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 431.28–431.30 [Reserved]

Subpart C—Safety Review and Approval for Launch and Reentry of a Reusable Launch Vehicle

§ 431.31 General.

(a) The FAA conducts a safety review to determine whether an applicant is capable of launching an RLV and payload, from a designated launch site, and reentering the RLV and payload, if any, to a designated reentry site, or otherwise landing the RLV and payload, if any, on Earth, without jeopardizing public health and safety and the safety of property.

(b) The FAA issues a safety approval to an RLV mission license applicant that satisfies the requirements of this subpart. The FAA evaluates on an individual basis all public safety aspects of a proposed RLV mission to ensure they are sufficient to support safe conduct of the mission. A safety approval is part of the licensing record on which the FAA's licensing determination is based.

(c) The FAA advises an applicant, in writing, of any issue raised during a safety review that would impede issuance of a safety approval. The applicant may respond, in writing, or revise its license application.

§ 431.33 Safety organization.

(a) An applicant shall maintain a safety organization and document it by identifying lines of communication and approval authority for all mission decisions that may affect public safety. Lines of communication within the applicant's organization, between the applicant and the launch site, and between the applicant and the reentry site, shall be employed to ensure that personnel perform RLV mission operations in accordance with plans and procedures required by this subpart. Approval authority shall be employed to ensure compliance with terms and conditions stated in an RLV mission license and with the plans and procedures required by this subpart.

(b) An applicant must designate a person responsible for the conduct of all licensed RLV mission activities.

(c) *Safety official.* An applicant shall designate by name, title, and qualifications, a qualified safety official authorized by the applicant to examine all aspects of the applicant's operations with respect to safety of RLV mission activities and to monitor independently compliance by vehicle safety operations personnel with the applicant's safety policies and procedures. The safety official shall report directly to the person responsible for an applicant's licensed RLV mission activities, who shall ensure that all of the safety official's concerns are addressed both before the mission is initiated and before reentry or descent of an RLV is initiated. The safety official is responsible for—

(1) Conducting operational dress rehearsals in accordance with procedures required by § 431.37(a)(4), that ensure the readiness of vehicle safety operations personnel to conduct a safe mission under nominal and non-nominal conditions; and

(2) Completing a mission readiness determination as required by § 431.37 of this subpart before an RLV mission is initiated. The safety official must monitor and report to the person responsible for the conduct of licensed RLV mission activities any non-compliance with procedures listed in §§ 431.37 and 431.43 or any representation contained in the application, and the readiness of the licensee to conduct mission operations in accordance with the license and this part. The safety official is responsible for compliance with §§ 431.37 and 431.43 and with representations contained in the application.

§ 431.35 Acceptable reusable launch vehicle mission risk.

(a) To obtain safety approval for an RLV mission, an applicant must demonstrate that the proposed mission does not exceed acceptable risk as defined in this subpart. For purposes of this part, the mission commences upon initiation of the launch phase of flight, proceeds through orbital insertion of an RLV or vehicle stage, or flight to outer space, whichever is applicable, and concludes upon landing on Earth of the RLV.

(b) Acceptable risk for a proposed mission is measured in terms of the expected average number of casualties (E_c) to the collective members of the public exposed to vehicle or vehicle debris impact hazards. To obtain safety

approval, an applicant shall demonstrate—

(1) For public risk, the risk level associated with a proposed mission does not exceed an expected average number of 0.00003 casualties per mission (or E_c criterion of 30×10^{-6}) to members of the public from the applicant's proposed activity; and

(2) For persons within a 100-mile distance from the border of the designated reentry site and contingency abort locations, if any, the risk level associated with a proposed mission does not exceed an expected average number of .000001 casualties per mission (or E_c criterion of 1×10^{-6}).

(c) *Hazard identification and risk assessment.* To demonstrate compliance with acceptable risk criteria in this section, an applicant shall employ a system safety process to identify the hazards and assess the risks to public health and safety and the safety of property associated with the mission, including nominal and non-nominal operation and flight of the vehicle and payload, if any. An acceptable system safety analysis identifies and assesses the probability and consequences of any reasonably foreseeable hazardous events, and safety-critical system failures during launch and reentry that could result in a casualty to the public.

(d) As part of the demonstration required under paragraph (c) of this section, an applicant must—

(1) Identify and describe the structure of the RLV, including physical dimensions and weight;

(2) Identify and describe any hazardous materials, including radioactive materials, and their container on the RLV;

(3) Identify and describe safety-critical systems;

(4) Identify and describe all safety-critical failure modes and their consequences;

(5) Provide drawings and schematics for each safety-critical system identified under paragraph (d) (3) of this section;

(6) Provide a timeline identifying all safety-critical events;

(7) Provide data that validates the applicant's system safety analyses required in paragraph (c) of this section; and

(8) Provide flight trajectory analyses covering launch or ascent of the vehicle through orbital insertion and reentry or descent of the vehicle through landing, including three-sigma dispersion.

§ 431.37 Mission readiness.

(a) *Mission readiness requirements.* An applicant shall submit the following procedures for verifying mission readiness:

(1) Mission readiness review procedures that involve the applicant's vehicle safety operations personnel, and launch site and reentry site personnel involved in the mission. The procedures shall ensure a mission readiness review is conducted during which the designated individual responsible for the conduct of licensed activities under § 431.33(b) of this subpart is provided with the following information to make a judgment as to mission readiness—

(i) Readiness of the RLV including safety-critical systems and payload for launch and reentry flight;

(ii) Readiness of the launch site, personnel, and safety-related launch property and launch services to be provided by the launch site;

(iii) Readiness of the reentry site, personnel, and safety-related property and services for reentry flight and vehicle recovery;

(iv) Readiness of vehicle safety operations personnel to support mission flight, including results of dress rehearsals and simulations conducted in accordance with paragraph (a)(4) of this section;

(v) Mission rules and constraints, including contingency abort plans and procedures, if any, as required under § 431.39 of this part;

(vi) Unresolved safety issues identified during the mission readiness review and plans for addressing them; and

(vii) Any additional safety information required by the individual designated under § 431.33(b) of this part to determine launch and reentry readiness.

(2) Procedures that ensure mission constraints, rules, contingency abort and emergency abort procedures are listed and consolidated in a safety directive or notebook approved by the person designated by the applicant under § 431.33(b) of this subpart, the launch site operator, and the reentry site operator, if any;

(3) Procedures that ensure currency and consistency of licensee, launch site operator, and reentry site operator checklists;

(4) Dress rehearsal procedures that—

(i) Ensure crew readiness under nominal and non-nominal flight conditions;

(ii) Contain criteria for determining whether to dispense with or add one or more dress rehearsals; and

(iii) Verify currency and consistency of licensee, launch site operator, and reentry site operator checklists; and

(5) Procedures for ensuring the licensee's vehicle safety operations personnel adhere to crew rest rules of this part.

§ 431.39 Mission rules, procedures, contingency plans, and checklists.

(a) An applicant shall submit mission rules, procedures, checklists, emergency plans, and contingency abort plans, if any, that ensure safe conduct of mission operations during nominal and non-nominal vehicle flight.

(b) Mission rules, procedures, checklists, emergency plans, and contingency abort plans must be contained in a safety directive, notebook, or other compilation that is approved by the safety official designated under § 431.33(c) of this part and concurred in by the launch site operator and reentry site operator, if any.

(c) Vehicle safety operations personnel must have current and consistent mission checklists.

§ 431.41 Communications plan.

(a) An applicant shall submit a plan providing vehicle safety operations personnel communications procedures during the mission. Procedures for effective issuance and communication of safety-critical information during the mission shall include hold/resume, go/no go, contingency abort, if any, and emergency abort commands by vehicle safety operations personnel. The communications plan shall describe the authority of vehicle safety operations personnel, by individual or position title, to issue these commands. The communications plan shall ensure that—

(1) Communication networks are assigned so that personnel identified under this section have direct access to real-time, safety-critical information required for making these decisions and issuing the commands;

(2) Personnel identified under this section monitor a common intercom channel for safety-critical communications during launch and reentry;

(3) A protocol is established for utilizing defined radio communications terminology; and

(4) Communications affecting the safety of the mission are recorded.

(b) An applicant shall submit procedures to ensure that licensee and reentry site personnel, if any, receive a copy of the communications plan required by this section and that the reentry site operator, if any, concurs with the communications plan.

§ 431.43 Reusable launch vehicle mission operational requirements and restrictions.

(a) An applicant for RLV mission safety approval shall submit procedures—

(1) That ensure RLV mission risks do not exceed the criteria set forth in

§ 431.35 of this part for nominal and non-nominal operations;

(2) That ensure conformance with the system safety process and associated hazard identification and risk assessment required under § 431.35(c);

(3) That ensure conformance with operational restrictions listed in paragraphs (c) through (e) of this section;

(4) To monitor and verify the status of RLV safety-critical systems immediately before and during mission operations; and

(5) For human activation or initiation of a flight safety system that safely aborts the launch of an RLV if the vehicle is not operating within approved mission parameters and the vehicle poses risk to public health and safety and the safety of property in excess of acceptable flight risk as defined in § 431.35.

(b) To satisfy risk criteria set forth in § 431.35(b)(1), an applicant for RLV mission safety approval shall identify suitable and attainable locations for nominal landing and vehicle staging impact, if any. An application shall identify such locations for a contingency abort if necessary to satisfy risk criteria contained in § 431.35(b)(1) during launch of an RLV. A nominal landing, vehicle staging impact and contingency abort location are suitable for launch or reentry if—

(1) For any vehicle or vehicle stage, the area of the predicted three-sigma dispersion of the vehicle or vehicle stage can be wholly contained within the designated location; and

(2) The location is of sufficient size to contain landing impacts, including debris dispersion upon impact and any toxic release.

(c) For an RLV mission—

(1) A collision avoidance analysis shall be performed in order to maintain at least a 200-kilometer separation from any inhabitable orbiting object during launch and reentry. The analysis shall address:

(i) For launch, closures in a planned launch window for ascent to outer space or, for an orbital RLV, to initial orbit through at least one complete orbit;

(ii) For reentry, the reentry trajectory;

(iii) Expansions of the closure period by subtracting 15 seconds from the closure start-time and adding 15 seconds to the closure end-time for each sequential 90 minutes elapsed time period, or portion there of, beginning at the time the state vectors of the orbiting objects were determined;

(2) The projected instantaneous impact point (IIP) of the vehicle shall not have substantial dwell time over densely populated areas during any segment of mission flight;

(3) There will be no unplanned physical contact between the vehicle or its components and payload after payload separation and debris generation will not result from conversion of energy sources into energy that fragments the vehicle or its payload. Energy sources include, but are not limited to, chemical, pneumatic, and kinetic energy; and

(4) Vehicle safety operations personnel shall adhere to the following work and rest standards:

(i) A maximum 12-hour work shift with at least 8 hours of rest after 12 hours of work, preceding initiation of a reentry mission or during the conduct of a mission;

(ii) A maximum of 60 hours worked in the 7 days, preceding initiation of an RLV mission;

(iii) A maximum of 14 consecutive work days; and

(iv) A minimum 48-hour rest period after 5 consecutive days of 12-hour shifts.

(d) In addition to requirements of paragraph (c) of this section, any unproven RLV may only be operated—

(1) Such that the projected instantaneous impact point (IIP) of the vehicle does not have substantial dwell time over populated areas; or

(2) Such that the expected average number of casualties to members of the public does not exceed 30×10^{-6} ($E_c \leq 30 \times 10^{-6}$) given a probability of vehicle failure equal to 1 ($p_f = 1$) at any time the IIP is over a populated area;

(e) Any RLV that enters Earth orbit may only be operated such that the vehicle operator is able to—

(1) Monitor the status of safety-critical systems immediately before enabling reentry flight and verify that the vehicle can reenter safely to Earth; and

(2) Issue a command enabling reentry of the vehicle. Reentry cannot be initiated autonomously under nominal circumstances without prior enable.

§ 431.45 Mishap investigation plan and emergency response plan.

(a) An applicant shall submit a mishap investigation plan (MIP) containing the applicant's procedures for reporting and responding to launch and reentry accidents, launch and reentry incidents, or other mishaps, as defined in § 401.5 of this chapter, that satisfies requirements of § 415.41 of this subchapter. An applicant shall submit an emergency response plan (ERP) that contains procedures for informing the affected public of a planned reentry. An ERP will provide procedures to notify local officials of an off-site landing. The MIP and ERP shall be signed by an individual authorized to sign and certify the application in accordance with § 413.7(c) of this chapter, the person responsible for the conduct of all licensed RLV mission activities designated under § 431.33(b) of this subpart, and the safety official designated under § 431.33(c) of this subpart. MIPs covering launch and reentry flight phases of an RLV mission may be combined in a single document.

(b) *Report requirements.* A MIP shall provide for—

(1) Immediate notification to the FAA Washington Operations Center in case of an event identified in paragraph (a) of this section. In addition to requirements of § 415.41(b), the notification shall include:

(i) Date and time of occurrence;

(ii) Description of the event;

(iii) Intended and actual location of reentry, or other landing on Earth;

(iv) Identification of the vehicle;

(v) Identification of the payload, if applicable;

(vi) Number and general description of any fatalities and injuries;

(vii) Property damage, if any, and an estimate of its value;

(viii) Identification of any hazardous material, as defined in § 401.5 of this chapter, involved in the event, whether on the vehicle, payload, or on the ground;

(ix) Action taken by personnel to contain the consequences of the event;

(x) Description of weather conditions at the time of the event; and

(xi) Potential consequences for other vehicles or systems of similar type and proposed operations.

(2) Submission of a written preliminary report to the FAA Associate Administrator for Commercial Space Transportation in the event of a reentry accident or reentry incident, as defined in § 401.5 of this chapter, within 5 days of the event. The report shall identify the event as either a reentry accident or reentry incident and must include the information specified in paragraph (b)(1) of this section.

(c) A mishap investigation plan must contain procedures to—

(1) Ensure the consequences of a reentry accident, reentry incident, or other mishap are contained and minimized;

(2) Ensure data and physical evidence are preserved;

(3) Investigate the cause of a reentry accident, reentry incident, or other mishap;

(4) Report the mishap to the FAA;

(5) Designate a point of contact for the FAA and the National Transportation Safety Board;

(6) Cooperate with investigations conducted by the FAA and the National Transportation Safety Board;

(7) Delineate responsibilities, including reporting responsibilities, for personnel assigned to conduct investigations and for any unrelated entities retained by the licensee to conduct or participate in investigations.;

(8) Report investigation results to the FAA; and

(9) Identify and adopt preventive measures for avoiding a recurrence of the event.

(d) An emergency response plan shall provide for—

(1) Notification to local officials in the event of an off-site landing so that vehicle recovery can be conducted safely and effectively, with minimal risk to public safety. The plan must provide for the quick dissemination of up to date information to the public, and for doing so in advance of reentry to the extent practicable.

(2) A public information dissemination plan for informing the potentially affected public, in laymen's terms and in advance of a planned reentry, of the estimated date, time and landing location for the reentry activity.

(3) An ERP shall be submitted as part of the application process.

§ 431.47 Denial of safety approval.

The FAA notifies an applicant, in writing, if the FAA has denied safety approval for an RLV mission license application. The notice states the reasons for the FAA's determination. The applicant may respond to the reasons for the determination and request reconsideration.

§§ 431.48–431.50 [Reserved]

Subpart D—Payload Reentry Review and Determination

§ 431.51 General.

(a) A payload reentry review is conducted to examine the policy and safety issues related to the proposed reentry of a payload, other than a U.S. Government payload or a payload whose reentry is subject to regulation by another Federal agency, to determine whether the FAA will approve reentry of the payload.

(b) A payload reentry review may be conducted as part of an RLV mission license application review or may be requested by a payload owner or operator in advance of or separate from an RLV mission license application.

(c) A payload reentry determination will be made part of the licensing record on which the FAA's licensing determination is based.

§ 431.53 Classes of payloads.

(a) The FAA may approve the return of a type or class of payloads (for example, communications or microgravity/scientific satellites).

(b) The RLV mission licensee that will return a payload approved for reentry under this section, is responsible for providing current information in accordance with § 431.57 regarding the payload proposed for reentry no later than 60 days before a scheduled RLV mission involving that payload.

§ 431.55 Payload reentry review.

(a) In conducting a payload reentry review to decide if the FAA should approve reentry of a payload, the FAA determines whether its reentry presents any issues that would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States.

(b) The FAA consults with the Department of Defense to determine whether reentry of a proposed payload presents any issues adversely affecting U.S. national security.

(c) The FAA consults with the Department of State to determine whether reentry of a proposed payload presents any issues adversely affecting U.S. foreign policy interests or international obligations.

(d) The FAA consults with other Federal agencies, including the National Aeronautics and Space Administration, authorized to address issues identified under paragraph (a) of this section.

(e) The FAA advises a person requesting a payload reentry determination, in writing, of any issue raised during a payload reentry review that would impede the issuance of a favorable determination to reenter that payload. The person requesting a payload reentry review may respond, in writing, or revise its application.

§ 431.57 Information requirements for payload reentry review.

A person requesting reentry review of a particular payload or payload class must identify the following:

(a) Payload name or class and function;

(b) Physical characteristics, dimensions, and weight of the payload;

(c) Payload owner and operator, if different from the person requesting the payload reentry review;

(d) Type, amount, and container of hazardous materials, as defined in § 401.5 of this chapter, and radioactive materials in the payload;

(e) Explosive potential of payload materials, alone and in combination with other materials found on the payload or RLV during reentry;

(f) Designated reentry site(s); and

(g) Method for securing the payload on the RLV.

§ 431.59 Issuance of payload reentry determination.

(a) The FAA issues a favorable payload reentry determination unless it determines that reentry of the proposed payload would adversely affect U.S. national security or foreign policy interests, would jeopardize public health and safety or the safety of property, or would not be consistent with international obligations of the United States. The FAA responds to any person who has requested a payload reentry review of its determination in writing. The notice states the reasons for the determination in the event of an unfavorable determination.

(b) Any person issued an unfavorable payload reentry determination may respond to the reasons for the determination and request reconsideration.

§ 431.61 Incorporation of payload reentry determination in license application.

A favorable payload reentry determination issued for a payload or class of payload may be included by an RLV mission license applicant as part of its application. Before the conduct of an RLV mission involving a payload approved for reentry, any change in information provided under § 431.57 of this subpart must be reported by the licensee in accordance with § 413.17 of this chapter. The FAA determines whether a favorable payload reentry determination remains valid and may conduct an additional payload reentry review.

§§ 431.62–431.70 [Reserved]

Subpart E—Post-Licensing Requirements—Reusable Launch Vehicle Mission License Terms and Conditions

§ 431.71 Public safety responsibility.

(a) A licensee is responsible for ensuring the safe conduct of an RLV mission and for protecting public health and safety and the safety of property during the conduct of the mission.

(b) A licensee must conduct a licensed RLV mission and perform RLV safety procedures in accordance with representations made in its license application. A licensee's failure to perform safety procedures in accordance with the representations made in the license application or comply with any license condition is sufficient basis for

the revocation of a license or other appropriate enforcement action.

§ 431.73 Continuing accuracy of license application; application for modification of license.

(a) A licensee is responsible for the continuing accuracy of representations contained in its application for the entire term of the license.

(b) After a license has been issued, a licensee must apply to the FAA for modification of the license if'

(1) The licensee proposes to conduct an RLV mission or perform a safety-critical operation in a manner not authorized by the license; or

(2) Any representation contained in the license application that is material to public health and safety or the safety of property is no longer accurate and complete or does not reflect the licensee's procedures governing the actual conduct of an RLV mission. A change is material to public health and safety or the safety of property if it alters or affects the—

(i) Mission rules, reentry plans, contingency abort plans, if any, or emergency plans submitted in accordance with § 431.39 of this part;

(ii) Class of payload;

(iii) Type of RLV;

(iv) Any safety-critical system;

(v) Type and container of the hazardous material carried by the vehicle;

(vi) Flight trajectory;

(vii) Launch site or reentry site; or

(viii) Any safety system, policy, procedure, requirement, criteria, or standard.

(c) An application to modify an RLV mission license must be prepared and submitted in accordance with part 413 of this chapter. The licensee must indicate any part of its license or license application that would be changed or affected by a proposed modification.

(d) The FAA reviews determinations and approvals required by this chapter to determine whether they remain valid after submission of a proposed modification.

(e) Upon approval of a modification, the FAA issues either a written approval to the licensee or a license order amending the license if a stated term or condition of the license is changed, added, or deleted. An approval has the full force and effect of a license order and is part of the licensing record.

§ 431.75 Agreements.

(a) *Launch and reentry site use agreements.* Before conducting a licensed RLV mission using property and services of a Federal launch range or licensed launch or reentry site operator, a licensee or applicant shall enter into an agreement with the Federal launch range and/or licensed site operator that provides for access to and use of property and services required to support a licensed RLV mission or reentry and for public safety related operations and support. The agreement shall be in effect before any licensed RLV mission or reentry. A licensee shall comply with any requirements of the agreement that may affect public health and safety and the safety of property during the conduct of its licensed activity.

(b) *Agreements for notices to mariners and airmen.* Unless otherwise addressed in agreements between a licensed launch site operator and the U.S. Coast Guard and the FAA, respectively, a licensee authorized to conduct an RLV mission using a launch site or reentry site other than a Federal launch range shall complete the following:

(1) An agreement between the licensee and the local U.S. Coast Guard district to establish procedures for the issuance of a Notice to Mariners prior to a launch or reentry and other measures as the Coast Guard deems necessary to protect public health and safety; and

(2) An agreement between the licensee and the FAA regional office having jurisdiction over the airspace through which a launch and reentry will take place, to establish procedures for the issuance of a Notice to Airmen prior to the conduct of a licensed launch or reentry and for closing of air routes during the respective launch and reentry windows and other measures deemed necessary by the FAA regional office in order protect public health and safety.

§ 431.77 Records.

(a) Except as specified in paragraph (b) of this section, a licensee shall maintain for 3 years all records, data, and other material necessary to verify that a licensed RLV mission is conducted in accordance with representations contained in the licensee's application.

(b) In the event of a launch accident, reentry accident, launch incident or reentry incident, as defined in § 401.5 of this chapter, a licensee shall preserve all records related to the event. Records must be retained until completion of any Federal investigation and the FAA advises the licensee that the records need not be retained. The licensee shall make all records required to be maintained under the regulations available to Federal officials for inspection and copying.

§ 431.79 Reusable launch vehicle mission reporting requirements.

(a) Not less than 60 days before each RLV mission conducted under a license, a licensee shall provide the FAA with the following information:

(1) Payload information in accordance with § 431.57 of this part; and

(2) Flight information, including the vehicle, launch site, planned launch and reentry flight path, and intended landing sites including contingency abort sites.

(3) Launch or reentry waivers, approved or pending, from a federal range for which the launch or reentry will take place, that are unique and may affect public safety.

(b) Not later than 15 days before each licensed RLV mission, a licensee must notify the FAA, in writing, of the time and date of the intended launch and reentry or other landing on Earth of the RLV.

(c) A licensee must report a launch accident, launch incident, reentry accident, reentry incident, or other mishap immediately to the FAA Operations Center and provide a written preliminary report in the event of a launch accident, launch incident, reentry accident, or reentry incident, in accordance with the mishap investigation and emergency response plan submitted as part of its license application under § 431.45 of this part.

§ 431.81 Financial responsibility requirements.

A licensee under this part must comply with financial responsibility requirements specified in its license.

§ 431.83 Compliance monitoring.

A licensee shall allow access by, and cooperate with, federal officers or employees or other individuals authorized by the FAA to observe any activities of the licensee, or of the licensee's contractors or subcontractors, associated with the conduct of a licensed RLV mission.

§ 431.85 Registration of space objects.

(a) To assist the U.S. Government in implementing Article IV of the 1975 Convention on Registration of Objects Launched into Outer Space, each licensee shall provide to the FAA the information required by paragraph (b) of this section for all objects placed in space by a licensed RLV mission, including an RLV and any components, except:

(1) Any object owned and registered by the U.S. Government; and

(2) Any object owned by a foreign entity.

(b) For each object that must be registered in accordance with this

section, a licensee shall submit the following information not later than thirty (30) days following the conduct of a licensed RLV mission :

(1) The international designator of the space object(s);

(2) Date and location of the RLV mission initiation;

(3) General function of the space object; and (4) Final orbital parameters, including:

(i) Nodal period;

(ii) Inclination;

(iii) Apogee; and

(iv) Perigee.

(c) A licensee shall notify the FAA when it removes an object that it has previously placed in space.

§§ 431.86–431.90 [Reserved]

Subpart F—Environmental Review

§ 431.91 General.

An applicant shall provide the FAA with sufficient information to analyze the environmental impacts associated with proposed operation of an RLV, including the impacts of anticipated activities to be performed at its reentry site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508, and the FAA's Procedures for Considering Environmental Impacts, FAA Order 1050.1D. 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 of FAA Order 1050.1D may be obtained from the Office of Environment and Energy, AEE–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3553. Copies of FAA Order 1050.1D may be inspected in the Rules Docket at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue SW., Washington, DC 20591 weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20001.

§ 431.93 Environmental information.

An applicant shall submit environmental information concerning—

(a) A designated reentry site, including contingency abort locations, if any, not covered by existing FAA environmental documentation;

(b) A proposed new RLV with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) A proposed reentry to an established reentry site involving an RLV with characteristics falling measurably outside the parameters of existing environmental impact statements covering that site;

(d) A proposed payload that may have significant environmental impacts in the event of a reentry accident; and

(e) Other factors as necessary to comply with the National Environmental Policy Act.

19. Part 433 is added to read as follows:

PART 433—LICENSE TO OPERATE A REENTRY SITE

Subpart A—General

Sec.
433.1 General.
433.3 Issuance of a license to operate a reentry site.
433.5 Operational restrictions on a reentry site.
433.7 Environmental.
433.9 Environmental information.

Authority: 49 U.S.C. 70101–70121

§ 433.1 General.

The FAA evaluates on an individual basis an applicant's proposal to operate a reentry site.

§ 433.3 Issuance of a license to operate a reentry site.

(a) The FAA issues a license to operate a reentry site when it determines that an applicant's operation of the reentry site does not jeopardize public health and safety, safety of property, U.S. national security or foreign policy interests, or international obligations of the United States.

(b) A license to operate a reentry site authorizes a licensee to operate a reentry site in accordance with the representations contained in the licensee's application, subject to the licensee's compliance with terms and conditions contained in any license order accompanying the license.

§ 433.5 Operational restrictions on a reentry site.

A license to operate a reentry site authorizes the licensee to offer use of the site to support reentry of a reentry vehicle for which the three-sigma footprint of the vehicle upon reentry is wholly contained within the site.

§ 433.7 Environmental.

An applicant shall provide the FAA with information for the FAA to analyze the environmental impacts associated with proposed operation of a reentry site. The information provided by an applicant must be sufficient to enable the FAA to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1508, and the FAA's Procedures for Consideration Environmental Impacts, FAA Order 1050.1D.

§ 433.9 Environmental information.

An applicant shall submit environmental information concerning a proposed reentry site not covered by existing environmental documentation for purposes of assessing reentry impacts.

20. Part 435 is added to read as follows:

PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE (RLV)

Subpart A—General

Sec.
435.1 Scope.
435.3 Types of reentry licenses.
435.5 Policy and safety approvals.
435.7 Payload reentry determinations.
435.9 Issuance of a reentry license.
435.11 Additional license terms and conditions.
435.13 Transfer of a reentry license.
435.15 Rights not conferred by reentry license.
435.16–435.20 [Reserved]

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

435.21 General.
435.23 Policy review requirements and procedures.
435.24–435.30 [Reserved]

Subpart C—Safety Review and Approval for Reentry of a Reentry Vehicle

435.31 General.
435.33 Safety review requirements and procedures.
435.35 Acceptable reentry risk for reentry of a reentry vehicle.
435.36–435.40 [Reserved]

Subpart D—Payload Reentry Review and Determination

435.41 General.
435.43 Payload reentry review requirements and procedures.
435.44–435.50 [Reserved]

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

435.51 General.
435.52–435.60 [Reserved]

Subpart F—Environmental Review

435.61 General.
435.62–435.70 [Reserved]

Authority: 49 U.S.C. 70101–70119.

Subpart A—General

§ 435.1 Scope.

This part prescribes requirements for obtaining a license to reenter a reentry vehicle other than a reusable launch vehicle (RLV), and post-licensing requirements with which a licensee must comply to remain licensed. Requirements for preparing a license application are contained in part 413 of this subchapter.

§ 435.3 Types of reentry licenses.

(a) *Reentry-specific license.* A reentry-specific license authorizes a licensee to reenter one model or type of reentry vehicle, other than an RLV, to a reentry site. A reentry-specific license may authorize more than one reentry and identifies each reentry authorized under the license. A licensee's authorization to reenter terminates upon completion of all activities authorized by the license or the expiration date stated in the reentry license, whichever occurs first.

(b) *Reentry operator license.* A reentry operator license authorizes a licensee to reenter any of a designated family of reentry vehicles, other than an RLV, within authorized parameters, including trajectories, transporting specified classes of payloads to any reentry site designated in the license. A reentry operator license is valid for a 2-year renewable term.

§ 435.5 Policy and safety approvals.

To obtain a reentry license, an applicant must obtain policy and safety approvals from the FAA. Requirements for obtaining these approvals are contained in subparts B and C of this part. Only a reentry license applicant may apply for the approvals, and may apply for either approval separately and in advance of submitting a complete license application, using the application procedures contained in part 413 of this subchapter.

§ 435.7 Payload reentry determinations.

(a) A payload reentry determination is required to transport a payload to Earth on a reentry vehicle unless the proposed payload is exempt from payload review.

(b) A payload reentry determination made under a previous license application under this subchapter may satisfy the requirements of paragraph (a) of this section.

(c) The FAA conducts a review, as described in subpart D of this part, to make a payload reentry determination. Either a reentry license applicant or a payload owner or operator may request a review of the proposed payload using the application procedures contained in part 413 of this subchapter. Upon receipt of an application, the FAA may conduct a payload reentry review independently of a reentry license application.

§ 435.9 Issuance of a reentry license.

(a) The FAA issues a reentry license to an applicant who has obtained all approvals and determinations required under this chapter for a reentry license.

(b) A reentry license authorizes a licensee to reenter a reentry vehicle and payload, if any, in accordance with the representations contained in the reentry licensee's application, subject to the licensee's compliance with terms and conditions contained in license orders accompanying the reentry license, including financial responsibility requirements.

§ 435.11 Additional license terms and conditions.

The FAA may amend a reentry license at any time by modifying or adding license terms and conditions to ensure compliance with 49 U.S.C. Subtitle IX, chapter 701, and applicable regulations.

§ 435.13 Transfer of a reentry license.

(a) Only the FAA may transfer a reentry license.

(b) An applicant for transfer of a reentry license shall submit a reentry license application in accordance with part 413 of this subchapter and satisfy the applicable requirements of this part. The FAA will transfer a reentry license to an applicant who has obtained all of the approvals and determinations required under this chapter for a reentry license. In conducting its reviews and issuing approvals and determinations, the FAA may incorporate any findings made part of the record to support the initial licensing determination. The FAA may modify a reentry license to reflect any changes necessary as a result of a reentry license transfer.

§ 435.15 Rights not conferred by reentry license.

Issuance of a reentry license does not relieve a licensee of its obligation to comply with requirements of law that may apply to its activities.

§§ 435.16–431.20 [Reserved]

Subpart B—Policy Review and Approval for Reentry of a Reentry Vehicle

§ 435.21 General.

The FAA issues a policy approval to a reentry license applicant upon completion of a favorable policy review. A policy approval is part of the licensing record on which the licensing determination is based.

§ 435.23 Policy review requirements and procedures.

Unless otherwise indicated in this subpart, regulations applicable to policy review and approval of the reentry of an RLV contained in part 431, subpart B of this subchapter shall apply to the policy review conducted for a license to reenter a reentry vehicle under this part.

§§ 435.24–435.30 [Reserved]

Subpart C—Safety Review and Approval for Reentry of a Reentry Vehicle

§ 435.31 General.

The FAA conducts a safety review to determine whether an applicant is capable of reentering a reentry vehicle and payload, if any, to a designated reentry site without jeopardizing public health and safety and the safety of property. A safety approval is part of the licensing record on which the licensing determination is based.

§ 435.33 Safety review requirements and procedures.

Unless otherwise stated in this subpart, regulations applicable to safety review and approval of the reentry of an RLV contained in part 431, subpart C of this subchapter shall apply to the policy review conducted for a license to reenter a reentry vehicle under this part.

§ 435.35 Acceptable reentry risk for reentry of a reentry vehicle.

To obtain safety approval reentry, an applicant must demonstrate that risk for the proposed reentry, when assessed in combination with launch of the reentry vehicle, does not exceed acceptable risk for the conduct of an RLV mission as defined in paragraphs (a) and (b) of § 431.35 of this subchapter.

§§ 435.36–435.40 [Reserved]

Subpart D—Payload Reentry Review and Determination

§ 435.41 General.

The FAA conducts a payload reentry review to examine the policy and safety issues related to the proposed reentry of a payload, except a U.S. Government payload, to determine whether the FAA will approve the reentry of the payload.

§ 435.43 Payload reentry review requirements and procedures.

Unless otherwise indicated in this subpart, regulations contained in part 431, subpart B of this subchapter applicable to a payload reentry review and determination for reentering a payload using an RLV shall apply to the payload reentry review conducted for a

license to reenter a reentry vehicle under this part.

§§ 435.44–435.50 [Reserved]

Subpart E—Post-Licensing Requirements—Reentry License Terms and Conditions

§ 435.51 General.

Unless otherwise indicated in this subpart, post-licensing requirements contained in part 431 subpart E of this subchapter applicable to a license to reenter an RLV shall apply to a license issued under this part.

§§ 435.52–435.60 [Reserved]

Subpart F—Environmental Review

§ 435.61 General.

Unless otherwise indicated in this subpart, environmental review requirements contained in part 431 subpart F, applicable to a license to reenter an RLV shall apply to an application for a reentry license under this part.

§§ 435.62–435.70 [Reserved]

Issued in Washington, DC, on April 13, 1999.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–9640 Filed 4–20–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proopsed Advisory Circular (AC) 431–01, Reusable Launch Vehicle System Safety Process and AC 431–02, Expected Casualty Calculations for Commercial Space Launch and Reentry Missions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and requests comments on two proposed AC's that would describe the Federal Aviation Administration (FAA) Commercial Space Transportation Reusable Launch Vehicle. The proposed AC's would provide guidance on two separate processes. Proposed AC 431–01 will provide top level guidance and information concerning the application of a logical safety process methodology for the identification and control of public safety hazards associated with the operation of Reusable Launch Vehicle (RLV) systems. Proposed AC 431–02 would provide a description of the measure Expected Casualty and generally will discuss the basics of an acceptable methodology for estimating the value or upper limit of the value for commercial space launch and reentry missions.

DATES: Comments must be received on or before July 20, 1999.

ADDRESSES: Send all comments on the proposed AC's to Stewart Jackson, AST–100, Space Systems Development Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–7982.

FOR FURTHER INFORMATION CONTACT: Stewart Jackson, AST–100, Space Systems Development Division, Office of the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, 800 Independence Ave SW., Washington, DC 20591, telephone (202) 267–7982.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC's may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC's by submitting such written data, views or arguments as they may desire. Commenters must identify AC 431–01 or AC 431–02 and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC's.

Discussion

AC 431–01

An RLV applicant will be expected to apply a disciplined, systematic, and logical safety process methodology for the identification and control of hazards associated with its launch and/or reentry systems. The applicant should use the System Safety Engineering Process or its equivalent, which includes a Risk Analysis, to show that it meets the safety process methodology critieria identified in the proposed AC. The use of a systematic process for the identification and control of safety critical systems and operations also provides the foundation supporting the Expected Casualty analysis. Without a process that helps assure a disciplined approach to the design, manufacture, integration, test, and operation of a system, it will be very difficult to establish any confidence in the probabilities of success and failure provided for the Expected Casualty analysis. The application of the system safety engineering approach in combination with the expected casualty analysis and the mandatory operational controls defined in the reentry proposal is intended to help ensure an adequate level of public safety.

AC 431–02

Expected casualty is used in the space transportation industry as a measure of risk to public safety from a specific mission, and is one of the factors typically used within the U.S. Government to determine if a mission may proceed or a license granted. Expected casualty is the expected average number of human casualties per commercial space mission. Human casualty is defined as a fatality or serious injury. For the purpose of this advisory circular, a human casualty is considered to be any human contact with a piece of vehicle debris or exposure to or greater. Another way of expressing the measure of expected casualty is that; if thousands of identical missions were conducted and all the casualties that resulted were added up and the sum divided by the number of missions, the actual casualties and the expected casualties per mission should ideally be the same.

For the purpose of this advisory circular, a mission includes all licensed flight segments throughout the mission. If there are activities that occur on orbit that are not conducted under a license, these segments, or phases, are not included in the mission. For example, a sub-orbital mission might include launch, stage separations, state ignitions and payload landing or recovery. An orbital mission of an expendable launch vehicle (ELV) might include vehicle launch, multiple booster stage separations, stage ignitions, booster stage recovery, and payload insertion into orbit.

The proposed AC's would become effective only after a final rule establishing the operational requirements for launches of reusable launch vehicles and the authorized conduct of commercial space reentry activities becomes effective.

Issued in Washington, D.C. April 13, 1999.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–9641 Filed 4–20–99; 8:45 am]

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federal register

Wednesday
April 21, 1999

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Evaluation of the U.S. Department of Labor's Education and Training for Youthful Offenders Initiative; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1218]

RIN 1121–ZB52

Evaluation of the U.S. Department of Labor's Education and Training for Youthful Offenders Initiative

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of funding availability.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Section 243(a)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Public Law 93–415), is issuing a solicitation for applications for a cooperative agreement from public and private agencies, organizations, institutions, and individuals to conduct process evaluations and impact evaluation feasibility assessments of two programs administered by the Department of Labor (Category II grants under the Youth Offender Demonstration Projects notice issued on September 2, 1998), which are intended to enhance school-to-work education and training in juvenile correctional facilities and improve transition into the community.

DATES: Applications under this program must be received no later than 5 p.m. EDT on June 21, 1999.

ADDRESSES: The Application Package is available through OJJDP's Juvenile Justice Clearinghouse at 800–638–8736 and can also be obtained online at the OJJDP Web site at www.ojjdp.ncjrs.org.

For further information regarding the Evaluation of the U.S. Department of Labor's Education and Training for Youthful Offenders Initiative, contact: Dean Hoffman, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 800 K Street, NW, Washington, DC 20531; phone: 202–353–9256; e-mail: hoffmand@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION:

Purpose

The evaluation will document the activities undertaken by two States selected to receive Department of Labor grants under its Education and Training for Youth Offenders Initiative, which is intended to enhance school-to-work education and training in juvenile correctional facilities and improve transition into the community. The evaluation also will assess the feasibility of conducting impact evaluations at both sites. The award will be made in the form of a cooperative agreement.

Background

This Office of Juvenile Justice and Delinquency Prevention (OJJDP) solicitation supports an evaluation of two Education and Training for Youth Offenders Initiative (Youth Offenders Initiative) grantees to be funded by the Department of Labor's Employment and Training Administration (ETA). The ETA's solicitation for these programs was published in the **Federal Register** on September 2, 1998 at 63 F.R. 46805–809. The solicitation also can be found on ETA's Web site at www.doleta.gov. The ETA solicitation describes grants to be awarded in three categories: (I) Model Community Projects; (II) Education and Training for Youth Offenders Initiatives; and (III) Community-Wide Coordination Projects. *This OJJDP solicitation supports the evaluation of the two grants to be awarded under category II.*

The two Youth Offenders Initiative grantees will provide comprehensive school-to-work education and training within juvenile correctional facilities and followup and job placement services as youth return to the community (i.e., case management and aftercare). It is intended that the comprehensive services developed under these grants will serve as models for other juvenile correctional facilities across the country. Applicants are encouraged to read the ETA solicitation for more detailed programmatic requirements.

The ETA solicitation states that, as a condition for award, applicants must agree to participate in the evaluation sponsored by OJJDP and comply with certain data collection requirements.

Goals

Phase I has three goals:

- Design and conduct a process evaluation of the two Education and Training for Youth Offenders Initiative programs to determine the extent to which educational, job training, and aftercare services were enhanced after the facility became an ETA program site.
- Assess the feasibility of an impact evaluation at both sites and design an impact evaluation where feasibility is established.

Phase II has a single goal:

- Conduct an impact evaluation to measure the effects of the program on job-related skills, employment, earnings, academic performance, and recidivism.

Objectives

The objectives for Phase I of this evaluation are as follows:

- Document each facility's existing (i.e., pre-ETA involvement) educational, job training, and employment programs and transitional (e.g., aftercare) services.
- Document enhancements made to existing services after the facility became an ETA program site.
- Describe the number and characteristics of the youth served and the type and amount of services delivered.
- Document how the State agency and/or local government assisted in planning, implementing, and managing the program.
- Document the facility's coordination with Federal, State, and local programs operating in the broader community and juvenile justice system with a focus on youth employment. Explore how the nature of this coordination may have changed after the facility became an ETA program site.
- Document the leveraging of other sources of funding, such as Juvenile Justice and Delinquency Prevention Act (JJDP) formula grant funds and Juvenile Accountability Incentive Block Grants (JAIBG) funds, and steps taken to assure the activities are sustained as the program is developed and implemented.
- Assess the extent to which each program has been implemented in accordance with the requirements of the ETA program solicitation.
- Identify and evaluate available data sources.
- Determine whether an impact evaluation is feasible at each site. Factors to consider include the number of youth served and the correctional environment in which the program is implemented.
- Design a rigorous impact evaluation where the feasibility of such is established.

The objectives for Phase II of this evaluation are as follows:

- Continue process evaluation activities.
- Conduct a rigorous impact evaluation to measure the effects of the program. As stated above, these programs should result in increased job-related skills, higher success in postrelease employment, increased postrelease earnings, improved academic performance, and reduced recidivism.

Evaluation Strategy

This evaluation will be conducted in two phases over a period of 36 months. Phase I (12 months), which will be funded under this solicitation, entails

designing and conducting a process evaluation at each site and determining the feasibility of conducting an impact evaluation at each site. The results of the feasibility assessments will determine to what extent, if at all, the project continues into Phase II (24 months). If the project does continue, Phase II will entail conducting an impact evaluation at one or both sites. OJJDP will make the final determination on whether the project continues into Phase II.

When addressing the issue of feasibility assessments, applicants must demonstrate an understanding of the potential difficulties involved in conducting an impact evaluation of an initiative such as this one (e.g., obtaining a sufficient sample size, isolating the effects of the program).

Products

The products for Phase I of the evaluation are:

1. A finalized process evaluation design and approach to conducting the feasibility assessments, to be submitted to OJJDP for approval within 2 months of the grant award. This will be a modified version of the detailed process evaluation design and approach to conducting the feasibility assessment that must be included in the application.
2. An interim report detailing the status of the process evaluation and summarizing data collected to date on each site, to be submitted 7 months after the project begins.
3. A report discussing the results of the impact evaluation feasibility assessments, due 10 months after the project begins. This report should include proposed impact evaluation designs where feasibility is established.
4. A Phase I final report at the end of the first phase. A summary version of this report suitable for publishing as an OJJDP Bulletin must be prepared.

The products for Phase II of the evaluation are:

1. An interim report summarizing the progress of the impact evaluation and additional findings of the process evaluation, to be submitted 6 months after Phase II begins.
2. A final report summarizing the results of the process and impact evaluation(s), to be submitted at the end of Phase II. A summary version of this report suitable for publishing as an OJJDP Bulletin must be prepared.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, and individuals. Private, for-profit organizations must agree to waive any profit or fee to be eligible. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly indicated as the primary applicant (for correspondence, award, and management purposes) and the others indicated as coapplicants.

Selection Criteria

Problem(s) To Be Addressed (15 points)

Applicants should demonstrate their knowledge of educational and vocational programming in juvenile correctional facilities, aftercare programs, and school-to-work efforts. Applicants should discuss their experience with evaluating similar programs. Applicants should demonstrate an understanding of and solutions to the challenges that will be encountered in conducting the process and impact evaluations.

Goals and Objectives (15 points)

Applicants must establish clearly defined, measurable, and attainable goals and objectives for the proposed evaluation and feasibility assessment.

Project Design (40 points)

Applicants must present a clear preliminary research design for conducting the process evaluation and assessing the feasibility of an impact evaluation at each site. The design may need to be revised once information is obtained about the specific approaches to be implemented by the selected State and juvenile correctional facilities. The research design should also include a workplan. All components of the research design should be sound, feasible, and capable of achieving the identified objectives. Issues to be addressed should be clearly defined.

Management and Organizational Capability (20 points)

Applicants should discuss how they will coordinate and manage this evaluation to achieve the objectives. Applicants' management structure and staffing must be adequate and appropriate for the successful implementation of the project. Applicants must clearly identify responsible individuals, their time commitment, and major tasks. Staff résumés should be attached as part of the appendixes. Applicants must demonstrate the organization's ability to conduct the project successfully. Description of prior experience in evaluating State and local programs should be provided.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken.

Format

Applicants are required to limit their proposals to a total of 25 pages (excluding the budget narrative). The page limit does not include the application forms, assurances, or appendixes. The appendixes must include the following: résumés of the project manager and other key staff and consultants and the timeline for the project's major milestones with dates for submission included.

Award Period

The project period will be 36 months, funded in one 12-month budget period (Phase I) and one 24-month budget period (Phase II). Funding for Phase II depends upon feasibility of conducting the impact evaluation(s), grantee performance, availability of funds, and other criteria established at the time of award.

Award Amount

Up to $250,000 is available for the award of a cooperative agreement for the initial 12-month budget period (Phase I).

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.542. This form is included in OJJDP's Application Kit, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The Application Kit is also available online at www.ojjdp.ncjrs.org.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the

award, and a brief description of its purpose.

''Related efforts'' is defined for these purposes as one of the following:

1. Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

3. Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Note: In the lower left-hand corner of the envelope, you must clearly write ''Evaluation of the Youth Offenders Initiative.''

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on June 21, 1999.

Contact

For further information, call Dean Hoffman, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–353–9256, or send an e-mail inquiry to hoffmand@ojp.usdoj.gov.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–9885 Filed 4–20–99; 8:45 am]

BILLING CODE 4410–18–P

federal register

Wednesday
April 21, 1999

Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Juvenile Accountability Incentive Block Grants; Final Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP (OJJDP)–1158]

RIN 1121–AA46

Juvenile Accountability Incentive Block Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Final rule.

SUMMARY: This rule provides procedures under which an eligible State, or unit of local government that receives a subgrant from the State, is required to provide notice to the Attorney General regarding the proposed use of funds available under the Juvenile Accountability Incentive Block Grants (JAIBG) program. The JAIBG program is designed to promote greater accountability in the juvenile justice system. OJJDP has developed the ''Juvenile Accountability Incentive Block Grants Program Guidance Manual'' to assist States and units of local government in applying for, receiving, obligating, and expending JAIBG funds. The manual is available on OJJDP's homepage at www.ojjdp.ncjrs.org.

EFFECTIVE DATE: This regulation is effective April 21, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney L. Albert, Deputy Director, State Relations and Assistance Division, OJJDP, 810 7th Street, NW, Washington, DC 20531. Phone: (202) 307–5924.

SUPPLEMENTARY INFORMATION:

A. Legislative Background

On October 14, 1998, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published proposed regulations in the **Federal Register**, at 63 FR 55069, for implementation of the JAIBG Program. The comment period ended November 13, 1998. Comments were received from two State agencies.

Pub. L. 105–119, November 26, 1997, Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for other Purposes (1998 Appropriations Act) appropriated $250,000,000 for the Juvenile Accountability Incentive Block Grants (JAIBG) program described in Title III of H.R. 3, as passed by the House of Representatives on May 8, 1997. Subsequently, Pub. L. 105–277, October 21, 1998, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (1999 Appropriations Act) further appropriated $250,000,000 to continue the JAIBG program.

B. Program Purposes

Funds are available under JAIBG in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, for State and local grants to support the following program purposes as set forth in section 1801(b)(1)–(11) of H.R. 3:

(1) Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;

(2) Developing and administering accountability-based sanctions for juvenile offenders;

(3) Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;

(4) Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(5) Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;

(6) Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(7) Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(8) The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;

(9) The establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;

(10) Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(11) Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and,

(12) implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

C. Application Process

Eligible applicants in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program under 1808(3) of Title III of H.R. 3) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant under section 1802 of H.R. 3. Specific information regarding section 1802 qualifications can be found in the JAIBG Program Guidance Manual.

The Chief Executive of each State is required to designate a State agency to apply for, receive, and administer JAIBG funds. The designated State agency will administer funds allocated to the State based on relative population of people under 18 years of age, with no more than 25% of the funds retained at the State level, absent a waiver, and with 75% or more allocated and subgranted to units of local government within the State. Specific information regarding ''waiver'' qualifications can be found in the JAIBG Program Guidance Manual.

JAIBG funds awarded to a State and expended at the State level or subgranted by a State to a unit of local government, other than funds set aside for administrative costs, may be expended only for programs or projects under one or more of the twelve purpose areas established by law.

D. Discussion of Comments

Comments were received from a State agency regarding issues relevant to the underlying JAIBG statute. These comments addressed issues involving the prosecution of juveniles in criminal court; implementing a system of graduated sanctions for juvenile offenders requesting that requirements of other OJJDP funded programs be tied

to local JAIBG grant awards; and, requesting clarification of match requirements. These comments were beyond the scope of this rulemaking but will be addressed in separate correspondence with the commenting agency.

Four additional comments were received from the above State agency, along with another State agency, that were within the scope of this rulemaking. These comments have been considered by OJJDP in the issuance of a final policy. The following is a summary of these comments and the response by OJJDP:

1. *Comment:* There is some concern with the additional burden of reporting to be placed on local governments and subgrantees.

Response: Use of the Follow-up Information Form to report to OJJDP on the expenditure of JAIBG funds will not be a cumbersome process. The form will require that the following types of information be provided on each unit of local government receiving JAIBG funds and on funds retained by the State for program expenditure:

1. OJJDP Award Number.
2. Award Amount.
3. Unit of local government or State agency name, address, city, State, zip, phone.
4. Contact person.
5. Jurisdiction type, i.e. State, County, Local, Regional.
6. Juvenile Crime Enforcement Coalition (JCEC) membership.
7. Verification that a Crime Enforcement Plan was developed.
8. Program Purpose Area Distribution of Funds (dollar amount allocated to each purpose area).

The Follow-up Information Form will be electronic and anticipated to be accessible via the Internet, thus reducing the burden required for the State to meet the reporting requirements. It is anticipated that the form will be very basic in nature and should not require undue burden to units of local government or the State agency responsible for submission.

2. *Comment:* States should be afforded the authority to fund projects without having to first seek programmatic fund drawdown approval from OJJDP. The FY 1998 JAIBG Guidance Manual specified a two phase implementation for States. Initially States could only access administrative funds while access to program funds required states to make a second submission to OJJDP. States could commit to program compliance in the FY 1999 application and inform OJJDP of any revisions throughout the year. This approach would align JAIBG with other programs administered by OJJDP.

Response: States may drawdown any or all funds at any time after the date of award. OJJDP allowed that while States were preparing for the first year of implementation the Designated State Agency (DSA) could drawdown administrative funds (up to 10% of the total award) up to 180 days prior to drawing down program funds. The drawdown of program funds starts the statutorily required 24 month grant period. Allowing States to first drawdown administrative funds provided an additional six months for States to prepare to administer the program.

The authority to obligate program funds through the use of the Follow-up Information Form is similar to the submission of the Sub-Award Report Form utilized for the OJJDP Formula Grants Program.

3. *Comment:* Section 31.502(b) of the proposed regulation provides ''* * * a State administering JAIBG funds must provide to OJJDP information that demonstrates that the State, or a unit of local government that receives JAIBG funds, has established a coordinated enforcement plan for reducing juvenile crime, developed by a Juvenile Crime Enforcement Coalition. The phrase ''information that demonstrates'' is subject to interpretation. A certification or an assurance would meet the requirement, without increasing the documentation requirements of the States or the units of local government.

Response: Submission of the Follow-up Information Form will satisfy the requirements of providing information.

4. *Comment:* Section 31.503 of the proposed regulation provides a mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government. A ''review'' by OJJDP is identified. Since the proposed use of funds should be consistent with the plan as provided in § 31.502, could the Follow-up Information Form with a planning assurance meet the planning requirements as a single mechanism for submission to OJJDP?

Response: The review by OJJDP is only for funds retained at the State level. It is the responsibility of the DSA to review submissions by units of local government to determine if planning requirements have been met and funds are budgeted for expenditures within the twelve program purpose areas.

For funds expended at the State level, the Follow-up Information Form will include a planning assurance and will serve as the single mechanism for submission to OJJDP.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation 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 does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

(1) This rule provides the procedures under which eligible applicants are required to provide notice regarding the proposed use of funds available under the JAIBG program; and

(2) The award of such funds imposes no requirements on small business or on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based companies to compete in domestic and export markets.

National Environmental Policy Act

This rule has been reviewed in accordance with OJP's Procedures for Implementing the National Environmental Policy Act, 28 CFR part 61. The Assistant Attorney General for OJP has determined that this regulation does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to and approved by the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Administrative practice and procedure, Grants.

For the reasons set forth in the preamble, 28 CFR part 31 is amended as follows:

PART 31—OJJDP GRANT PROGRAMS

1. The authority citation for part 31 is revised to read as follows:

Authority: 42 U.S.C. 5601 *et seq.;* Pub. L. 105–119, 111 Stat. 2440.

2. The heading for part 31 is revised as set forth above.

3. The designations ''Subpart A through Subpart E'' are removed and the headings remain as undesignated centerheadings.

§§ 31.1 through 31.403 and undesignated centerheadings [Designated as Subpart A]

4. Sections 31.1 through 31.403, and the undesignated centerheadings, are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Formula Grants

§ 31.1 [Amended]

5. Section 31.1 is amended by revising ''This part'' to read as follows: ''This subpart''.

§ 31.200 [Amended]

6. Section 31.200 is amended by revising ''This part'' to read as follows: ''This subpart''.

§ 31.300 [Amended]

7. Section 31.300 is amended by revising ''This part'' to read as follows: ''This subpart''.

8. Part 31 is amended by adding new subpart B to read as follows:

Subpart B—Juvenile Accountability Incentive Block Grants

Sec.
31.500 Program purposes
31.501 Eligible applicants
31.502 Assurances and plan information
31.503 Notice of proposed use of funds

§ 31.500 Program purposes.

Funds are available under the Juvenile Accountability Incentive Block Grants (JAIBG) in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, for State and local grants to support the following program purposes:

(a) *Program purpose no. 1:* Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;

(b) *Program purpose no. 2:* Developing and administering accountability-based sanctions for juvenile offenders;

(c) *Program purpose no. 3:* Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;

(d) *Program purpose no. 4:* Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(e) *Program purpose no. 5:* Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;

(f) *Program purpose no. 6:* Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(g) *Program purpose no. 7:* Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(h) *Program purpose no. 8:* The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;

(i) *Program purpose no. 9:* The establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;

(j) *Program purpose no. 10:* Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(k) *Program purpose no. 11:* Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and,

(l) *Program purpose no. 12:* Implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

§ 31.501 Eligible applicants.

(a) *Eligible applicants.* Eligible applicants in FY 1998, FY 1999, and each subsequent fiscal year as funds are made available, are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant. Specific information regarding qualifications can be found in the JAIBG Program Guidance Manual.

(b) *Qualifications.* Each State Chief Executive Officer must designate a state agency to apply for, receive, and administer JAIBG funds.

§ 31.502 Assurances and plan information.

(a) In its application for a Juvenile Accountability Incentive Block Grant (JAIBG), each State must provide assurances to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), absent a waiver as provided in the JAIBG Program Guidance Manual, that:

(1) The State will subgrant at least 75% of the State's allocation of funds to eligible units of local government to implement authorized programs at the local level; and

(2) The State, and each unit of local government applying for a subgrant from the State, will expend not less than 45% of any grant provided to such State or unit of local government, other than funds set aside for administration, for program purposes 3–9 in § 31.500 (c) through (i) of this subpart, and will not spend less than 35% for program purposes 1, 2, and 10 in § 31.500 (a), (b), and (j) of this subpart, unless the State certifies to OJJDP, or the unit of local government certifies to the State, that the interests of public safety and juvenile crime control would be better served by expending the grant award for purposes set forth in the twelve program areas in a different ratio. Such certification shall provide information concerning the availability of existing structures or initiatives within the intended areas of expenditure (or the availability of alternative funding sources for those areas), and the reasons for the State or unit of local government's alternative use.

(b) Following award of JAIBG funds to a State by OJJDP, but prior to obligation of program funds by the State or of subgrant funds by a unit of local government for any authorized program purpose, a State administering JAIBG funds must provide to OJJDP information that demonstrates that the State, or a unit of local government that receives JAIBG funds, has established a coordinated enforcement plan for reducing juvenile crime, developed by a Juvenile Crime Enforcement Coalition (JCEC).

(c) State coordinated enforcement plans must be developed by a Juvenile Crime Enforcement Coalition consisting of representatives of law enforcement and social service agencies involved in juvenile crime prevention. To assist in developing the State's coordinated enforcement plan, States may choose to utilize members of the State Advisory Group (SAG) established by the State's Chief Executive under section 223(a)(3) of Part B of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, codified at 42 U.S.C. 5633(a)(3), if appropriate membership exists, or use or establish another planning group that constitutes a coalition of law enforcement and social service agencies.

(d) When establishing a local Juvenile Crime Enforcement Coalition (JCEC), units of local government must include, unless impracticable, individuals representing:

(1) Police,

(2) Sheriff,

(3) Prosecutor,

(4) State or local probation services,

(5) Juvenile court,

(6) Schools,

(7) Business, and

(8) Religious affiliated, fraternal, nonprofit, or social service organizations involved in crime prevention.

(e) Units of local government may utilize members of Prevention Policy Boards established pursuant to section 505(b)(4) of Title V of the JJDP Act, codified at 42 U.S.C. 5784(b)(4), to meet the JCEC requirement, provided that each JCEC meets the membership requirements listed in paragraph (d) of this section.

§ 31.503 Notice of proposed use of funds.

The mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government is by electronic submission of a ''Follow Up Information Form'' to be provided to each participating State. The purpose of this report is for the State to provide assurances to OJJDP that funds expended by the State and its subgrantee units of local government will be used for authorized program purpose areas. Although no actual program descriptions will be required, information about the distribution of funds among the authorized program purpose areas must be provided. Upon receipt and review of the ''Follow Up Information Form'' by OJJDP, States may obligate program funds retained for expenditure at the State level. Similarly, the State shall require that each recipient unit of local government submit its proposed use of non-administrative funds to the State prior to drawdown of subgrant funds to implement local programs and projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

Dated: April 12, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 99–9884 Filed 4–20–99; 8:45 am]

BILLING CODE 4410–18–P

federal register

Wednesday
April 21, 1999

Part VI

The President

Proclamation 7185—National Organ and Tissue Donor Awareness Week, 1999

Proclamation 7186—National Volunteer Week, 1999

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7185 of April 16, 1999

National Organ and Tissue Donor Awareness Week, 1999

By the President of the United States of America

A Proclamation

Organ donation is one of humanity's most noble expressions of compassion and generosity. It reflects the extraordinary selflessness of the donor and gives the recipient a second chance to experience life's abundant blessings.

For many people across our country, receiving an organ or tissue transplant means relief from suffering and a marked improvement in the quality of their lives. For others, it literally means the difference between life and death. And the demand for such donations continues to grow. In the last six years, the number of people on the national organ transplant list has doubled, from more than 30,000 in 1993 to more than 62,000 patients today. A new name is added to that list every 18 seconds.

Fortunately, thanks to remarkable medical breakthroughs, each of us has the power to improve these troubling statistics. In December of 1997, Vice President Gore and Secretary of Health and Human Services (HHS) Donna Shalala launched the National Organ and Tissue Donation Initiative to raise awareness of the successes of transplantation and to educate our citizens about the urgent and continuing need for organ and tissue donations. Building on this effort, the Health Care Financing Administration now requires hospitals participating in Medicaid and Medicare to notify organ procurement organizations of all deaths and imminent deaths at their facilities and to train their personnel to discuss donation with the families of potential donors. Judging from the positive impact of similar legislation in Pennsylvania, we anticipate that this new Federal regulation will substantially increase the number of donations throughout the country.

Becoming a donor is simple, requiring only that we complete and carry a donor card and inform our families and friends about our wish to donate. This second step is a critical one because, according to a new study issued by HHS, almost all Americans would agree to donate their loved one's tissue or organs if they knew their loved one had requested it. Fewer than half would consent if they did not know their loved one's wishes.

During National Organ and Tissue Donor Awareness Week, I urge all Americans to become potential donors. By doing so, we can bring new hope and improved lives to thousands of our fellow citizens and hasten the day when no American on the organ transplant waiting list loses the race against time.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 24, 1999, as National Organ and Tissue Donor Awareness Week. I urge all health care professionals, educators, the media, public and private organizations concerned with organ donation and transplantation, the clergy, and all Americans to join me in promoting greater awareness and acceptance of this humanitarian action.

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

William J. Clinton

[FR Doc. 99–10176
Filed 4–20–99; 8:51 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7186 of April 16, 1999

National Volunteer Week, 1999

By the President of the United States of America

A Proclamation

Helping others—and helping others help themselves—through volunteer work is a great American tradition. Our Nation's dedicated volunteers come from all walks of life, all races, and all ages. Whether they support their communities through their churches, synagogues, or other religious institutions, serve full-time as AmeriCorps members, or spend a few hours a week helping out organizations or individuals in need, America's volunteers are bringing hope and help to their fellow citizens and building a stronger, more compassionate Nation for us all.

Our volunteers know that service is one of the best ways to make a difference in the lives of others—and they are proving that Americans at any stage of life can serve. Thousands of older Americans donate their time to serve as foster grandparents, senior companions, and as part of the Retired and Senior Volunteer Program and other initiatives. As many as 13 million young Americans aged 12 to 17 also volunteer each year, improving their communities, broadening their educational experiences, developing new skills, and increasing their understanding of the responsibilities of citizenship. This week, during National Youth Service Day, young people across our country will participate in service activities and demonstrate with their good works the power of youth to strengthen our Nation.

Volunteers will become increasingly vital to our society as we enter a new millennium. We cannot rely solely on charitable contributions or government programs to address the challenges we see in our communities. Each of us must find our own role and take action as a volunteer, a neighbor, and a citizen. We must work together to ensure that every child has a caring adult in his or her life, a safe place in which to live and grow, a good school to attend, a healthy start in life, and a chance to serve the community. We must continually strive to bring hope and hard work to bear on the human problems we see every day. With warm hearts and willing hands, we can make a lasting difference.

During this week, let us renew our spirit of community, our sense of idealism, and our commitment to service. Let us also honor the invaluable work of the thousands of voluntary, civic, religious, school, and neighborhood groups across our country that are leading the way by serving their fellow Americans and improving the quality of life for us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18 through April 24, 1999, as National Volunteer Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities to express appreciation to the volunteers among us for their commitment to service and to encourage the spirit of volunteerism in our families and communities.

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

William J. Clinton

[FR Doc. 99–10177
Filed 4–20–99; 8:51 am]
Billing code 3195–01–P

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3 CFR

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